

~~COPY 1~~



Class ~~Law Library~~

Book JS 451

Copyright No. I 33 H 4

COPYRIGHT DEPOSIT.

1915

copy 2

Authorized by Law.

✓ A COMPILATION

OF THE

LAWS OF ILLINOIS,

RELATING TO

Township Organization ✓

AND

MANAGEMENT OF COUNTY AFFAIRS

WITH

Numerous Forms, and Notes of Instruction.

SUPPORTED BY ADJUDICATED CASES, OPINIONS OF THE ATTORNEY GENERAL
AND RULINGS OF THE AUDITOR OF PUBLIC ACCOUNTS.

NEW EDITION, ENLARGED AND COMPLETELY REVISED TO DATE. PRINTED FROM
ENTIRELY NEW TYPE, WITH A CAREFULLY
PREPARED INDEX.

✓ BY ELIJAH M. HAINES, ✓

COUNSELOR AT LAW.

Compiler of Township Organization Laws of Wisconsin, Michigan, Missouri and Minnesota
and Author of Haines' City and Village Laws, and Haines' Treatise for
Justices of the Peace, Haines' Legal Blank Forms, etc.

✓ TWENTY-SEVENTH EDITION REVISED ✓

CHICAGO:

THE LEGAL ADVISER PUBLISHING COMPANY

106 North La Salle Street

1915

Copy 2

55451
I33 H4
1915
copy

Entered according to act of Congress, in the year 1855, by
ELIJAH M. HAINES
in the clerk's office of the District Court for the Northern District of Illinois.

Entered according to act of Congress, in the year 1879, by
ELIJAH M. HAINES
in the office of the Librarian of Congress, at Washington, D. C.

Entered according to act of Congress, in the year 1883, by
ELIJAH M. HAINES
in the office of the Librarian of Congress, at Washington, D. C.

Entered according to act of Congress, in the year 1885, by
ELIJAH M. HAINES
in the office of the Librarian of Congress, at Washington, D. C.

Entered according to act of Congress, in the year 1892, by
THE LEGAL ADVISER PUBLISHING CO.
in the office of the Librarian of Congress, at Washington, D. C.

Entered according to act of Congress, in the year 1895, by
THE LEGAL ADVISER PUBLISHING CO.
in the office of the Librarian of Congress, at Washington, D. C.

Entered according to act of Congress, in the year 1897, by
THE LEGAL ADVISER PUBLISHING CO.
in the office of the Librarian of Congress, at Washington, D. C.

Entered according to act of Congress, in the year 1899, by
THE LEGAL ADVISER PUBLISHING CO.
in the office of the Librarian of Congress, at Washington, D. C.

Entered according to act of Congress, in the year 1902, by
THE LEGAL ADVISER PUBLISHING CO.
in the office of the Librarian of Congress, at Washington, D. C.

Entered according to act of Congress, in the year 1904, by
THE LEGAL ADVISER PUBLISHING CO.
in the office of the Librarian of Congress, at Washington, D. C.

Entered according to act of Congress, in the year 1906, by
THE LEGAL ADVISER PUBLISHING CO.
in the office of the Librarian of Congress, at Washington, D. C.

Entered according to act of Congress, in the year 1910, by
THE LEGAL ADVISER PUBLISHING CO.
in the office of the Librarian of Congress, at Washington, D. C.

Entered according to act of Congress in the year 1915, by
THE LEGAL ADVISER PUBLISHING CO.
in the office of the Librarian of Congress, at Washington, D. C.

APR 17 1915

©Cl A397613

TABLE OF CONTENTS.

Preface to Twenty-seventh (1915) edition.....	30
Preface to First edition.....	31

DIVISION I.

TOWNSHIP ORGANIZATION ACT.....	33-126
Article I. How Township Organization adopted.....	33- 39
Article II. How discontinued	40- 41
Article III. Of the alteration of boundaries, and division of towns and town property.....	42- 53
Article IV. Corporate powers of towns, and the exercise thereof—What may be done at town meetings —By-laws, rules and regulations.....	54- 69
Article V. Legal proceedings in favor of and against a town	69- 71
Article VI. Town Meeting—Judges of election.....	71- 76
Article VII. Town officers elected by ballot—Mode of conducting elections for town officers.....	77- 84
Article VIII. The mode of conducting town meetings for the transaction of miscellaneous business.....	85- 90
Article IX. Qualifications and tenure of office.....	90- 94
Article X. Vacancies in town offices and the manner of filling them	95- 98
Article XI. The Supervisor and his duties.....	98-105
Article XII. The Town Clerk and his duties.....	105-106
Article XIII. The Board of Town Auditors.....	107-110
Article XIV. Town and County Boards of Health.....	111-112
Article XV. Compensation of Town Officers.....	113-114
Refunding surplus funds.....	115-116
Cities organized as towns.....	116-117
Purchase or lease of town halls.....	117
Town halls in towns co-extensive with cities..	118-120
Canada Thistles	120-125
Publication of Annual Statements.....	125-126

DIVISION II.

ROADS AND BRIDGES.....	127-215
Article I. Definitions	127
Article II. State Highway Department.....	127-131

Article	III.	County Superintendents of Highways.....	131-132
Article	IV.	State Aid	133-144
Article	V.	Bridges and improvements constructed and repaired by a county at the joint expense of a county and any town or road district therein..	144-146
Article	VI.	Town and district organization and administration for highway purposes.....	147-148
		Subdivision II. Highway Officers: Their election, powers duties and compensation....	148-158
		Subdivision III. The raising of revenue for highway purposes and the application thereof	158-161
		Subdivision IV. Provisions specially applicable to bridges and improvements constructed or repaired at the joint expense of two adjoining towns or districts.....	162-164
		Subdivision V. The letting of contracts.....	164-165
		Subdivision VI. Laying out, altering, vacating, widening roads.....	165-176
		Subdivision VII. Repair and maintenance of roads and bridges.....	176
		Subdivision VIII. Gravel, rock and macadam—Hard roads	177-185
Article	VII.	Certain provisions applicable generally to highway officials	185-188
Article	VIII.	Law of the road—offenses and penalties.....	188-194
Article	IX.	Optional—single highway commissioner system	195-198
Article	X.	Act construed—statutes repealed.....	198-200
		Construction of bridge piers.....	200-201
		Exempting certain bridges from taxation.....	201
		Motor vehicle law.....	202-215

DIVISION III.

DRAINS AND DITCHES..	216-362
Farm drainage	216-217
Rights of drainage.....	217-222
Combined drainage	223-239
Special assessment	239-244
Appeal to county court.....	245-250
General duties of commissioners.....	251-261
Special drainage districts.....	261-279
River districts	279-280
Districts by user.....	280
District by mutual agreement.....	280-281

Repealing section	281-282
Drains constructed by license.....	282-284
Districts may issue bonds.....	284-286
Abatement of assessments.....	286-287
County ditches and drains.....	288-292
Dissolution of drainage districts.....	292-293
Protection, maintenance and repairs of drains and ditches...	293-294
For agricultural and sanitary purposes.....	294-295
Pumping plants—construction, maintenance and operation...	295-298
Certain districts authorized to acquire, maintain and operate dredge boats for the construction and preservation of drains, ditches and levees.....	298-299
Payment of assessments in drainage districts.....	299-302
Money to be refunded.....	302-303
To legalize drainage districts and assessment of benefits.....	303-305
Levees	306
Drains, ditches and levees for agricultural, sanitary and min- ing purposes	306-354
Adjoining drainage districts—connection.....	355-360
Adjoining drainage districts—joint works.....	360-362

DIVISION IV.

FENCES	363-390
Hedge fences	379-381
Fencing railroads	382-390

DIVISION V.

PAUPERS	391-406
Support of the poor.....	391-403
Residence for purpose of voting.....	403
Separate support—poor house.....	403-404
Tuition of pauper children.....	404-405
Children on poor farms.....	405-406

DIVISION VI.

TOWNSHIP INSURANCE COMPANIES.....	406-415
Admission of territory.....	414
Consolidation of township insurance companies.....	415

DIVISION VII.

ANIMALS	416-428
Dog and sheep Act.....	416-419
In relation to domestic animals.....	420-421
Estrays	421-422

Diseases among swine.....	423
Dogs	424
Animals and birds <i>Ferae Naturae</i>	424
Bounty for killing crows, etc.....	425-426
Bounty for killing ground hogs.....	427-428

DIVISION VIII.

REVENUE	429-596
Property liable for taxation.....	429-430
Property exempt from taxation.....	430-433
Rules for valuing personal property.....	433-434
Rules for valuing real estate.....	435
Personal property, when listed.....	435
Who shall list and what listed.....	435-436
When listed and assessed, and what held to be personal prop- erty—manner of listing.....	437-442
Form of schedule.....	442-444
Rules for listing credits.....	444-445
Rules for listing stock of mutual building, loan and home- stead associations	445-446
Rules for listing the property and business of banks, bankers, brokers and stock jobbers.....	446-447
Pawn-broker	447
Listing capital stock of corporations and franchises of persons	447-449
State and national banks.....	449-451
Manner of listing and valuing the property of railroads.....	451-455
Telegraph companies—return	455-456
Penalty	456
Perjury	457
Real property as of what time listed—who liable for tax.....	457-458
Subdividing	458
How listed as between counties.....	459
How listed as between towns.....	459
Making and delivery of assessment books and blanks.....	459-460
Appointment of assessors and deputy assessors.....	461
Oath and duties of assessors—assessment of real and personal property	461-464
Review of assessment by town board in counties under town- ship organization	464-465
Return of assessor to county clerk.....	465-467
Pay of assessors and deputy assessors.....	467
Duties of clerk on return of assessment books.....	467-468
Equalization of assessments by county board.....	468-470
Report of assessment by the clerk to the auditor, for equal- ization	470-471

State board of equalization.....	471-477
Rates of taxation.....	477
For State purposes.....	477-478
For county purposes.....	478
Towns, cities, etc.....	479
Collector's books extending rates.....	479-482
Qualification of town and district collectors.....	482-484
Delivery of collector's books—warrants.....	484-485
Collection district and who collector in counties not under township organization	485
Vacancies and resignations.....	485-486
Collectors	486-489
Manner in which taxes are to be collected.....	490-495
Sworn statements of collections to be made—payments.....	495-496
Return of town and district collectors to the county collector.....	496-498
Return of delinquent special assessment.....	499
County collector's receipts—powers.....	499-500
Advertisement for judgment and sale.....	500-505
Judgment	506-509
Sale of delinquent lands.....	509-513
Certified copy of sale lists to be sent to auditor.....	513-514
Redemption	514-517
Tax deeds	517-521
Forfeited property	521-524
Final settlement of county collector.....	524-526
Partial settlement of county collector.....	526-527
Final settlement of the county collector for State taxes.....	527-529
Liens of taxes.....	529-531
Who not eligible as bondsman.....	531
Liability on bonds.....	531
Suits against collectors.....	531-533
Sale of real estate on execution in behalf of the state—re- demption	533-534
Double payment and assessment—refunding.....	534-535
When records are destroyed.....	535
Other duties of auditor.....	535-538
Omitted property—saving clauses.....	538-539
Who may administer oaths.....	539
Penalties of officers.....	539-541
County to furnish books and blanks.....	541
County funds—manner of keeping account thereof.....	541-542
Definitions	542-543
Repealing clause	544
For the assessment of property and providing the means therefor	544-569

Concerning the levy and extension of taxes.....	569-574
Agricultural and other statistics.....	575-576
Assessment and taxation of bridges across navigable waters on the borders of this state.....	576-577
For State purposes.....	577-578
Validating acts of county board heretofore done in determin- ing amount of taxes to be raised for county purposes....	578-579
Gifts, legacies and inheritances.....	579-599
To provide for casual deficits or failures in revenues.....	595-596
Fund for University of Illinois.....	596

DIVISION IX.

ELECTIONS	597-695
Electors of president and vice president of the United States.....	597-598
Time of holding elections for certain officers.....	599-603
Election precincts	603-605
Judges and clerks.....	605-609
Oath of judges and clerks of election.....	609-610
Ballot boxes and poll books.....	610
Constables appointed to attend elections—order.....	610-611
Notice of election.....	611*
Conducting elections—returns	612-618
Qualification of voters.....	618-621
Canvassing votes—certificate of election.....	621-626
Offenses and penalties.....	626-631
Contesting elections	631-637
Resignations and vacancies.....	637-640
Registration of electors.....	640-647
Congressional apportionment	647-649
Senatorial and congressional apportionment.....	649-657
To regulate the manner of holding elections.....	657-681
Questions of public policy.....	681
Dispensing with individual tally marks in counting “Straight Tickets”	682-683
Women may vote for school officers.....	684
Women may vote for presidential electors and certain other officers, etc.	685
Anti-saloon territory	686-695

DIVISION X.

COUNTIES	696-772
Boundaries and jurisdiction.....	696
Alteration of county lines.....	696-698
New counties	698-702
Of the powers and duties of counties and county boards.....	702-712

Provisions specially applicable to the board of county commissioners in counties not under township organization..	712-713
Provisions specially applicable to the board of supervisors in counties under township organization.....	713-716
Special provisions applicable to the board of county commissioners of Cook County.....	716-729
Appointment of physician, etc., for county.....	729-733
Uniting counties	733-741
Bounty debt	742-743
Removal of obstructions from water courses.....	743
Removal of county seats.....	743-751
County court defined.....	751
Sites for county buildings.....	751-753
Boards of health in counties.....	753-754
Enabling county boards to issue bonds for purpose of paying outstanding indebtedness	755-757
Legalizing county bonds voted for county buildings.....	757
Burial of indigent or friendless Union soldiers or marines, etc.	757-758
May erect monuments or memorial buildings in honor of the soldiers and sailors.....	758-759
Classification of counties.....	759-760
Relief of the blind.....	760-762
County boards—employment of stenographers.....	762
County boards—funds for fair exhibits.....	762-763
County auditor in certain counties.....	763-764
County boards—funds for farmers' institutes.....	764
Court houses—lease of space.....	765
Appropriations for soil and crop improvement associations...	765-766
County clerks	766-768
County treasurers	769-772
<hr/>	
General Notes	773
Appendix	786
Parliamentary Law	786
Index	795

PREFACE TO TWENTY-SEVENTH (1915) EDITION.

The publishers herewith present this their revised Twenty-seventh Edition of Haines' Township Laws of the State of Illinois, embodying all the laws and amendatory Acts in force to date.

The most important changes in the laws since the 1910 edition of this work was published is the revised and amended Road and Bridge Law passed by the 1913 Session of the Legislature. The most significant are: a State Highway Department; State Aid to counties for building and improving highways; the appointment of County Superintendents of Highways; a Town and District Organization for Highway purposes; and an Optional Single Highway Commissioner System.

Other important new laws and amendments are found in "Drainage," "Elections," "Revenue," and "Counties."

The new Table of Contents, beginning on preceding page, will be found to be a great aid in finding the subjects desired under their proper heads and is an improvement on the one in previous editions.

Chicago, March, 1915.

THE PUBLISHERS.

PREFACE TO FIRST EDITION.

Previous to going to press with this work the compiler addressed circulars to supervisors and town clerks in the several towns in the State, asking their co-operation in its circulation, and for certain information within their reach in regard to their respective towns. The answers, in consequence of delay in the mails, in many instances were not received until after going to press. The compiler would, however, avail himself of this opportunity of acknowledging his gratitude to all such as have responded to his requirements, as well as for the kind feeling expressed upon their part, and encouragement extended in behalf of the work. It is acknowledged by all that a work of this kind has long been desired, not only to secure uniformity of action, but to guide the inexperienced under the peculiarities of the Township system; and the compiler claims no higher reward for his labor than that of having them duly appreciated by a practical portion of the public to whom the work is now commended.

ELIJAH M. HAINES.

May, 1855.

LAWS OF ILLINOIS

—RELATING TO—

TOWNSHIP ORGANIZATION

—AND—

Management of County Affairs

DIVISION I

TOWNSHIP ORGANIZATION ACT

AN ACT to revise the law in relation to township organization. [Approved and in force March 4th, 1874. Revised Stat., Chap. 139.]

ARTICLE I.

HOW TOWNSHIP ORGANIZATION ADOPTED.

1. At general election.
2. Petition.
3. Returns.
4. When township government to commence—Majority vote defined.
5. Commissioners appointed.
6. Division of county into towns.
7. Naming of towns.
8. Report of commissioners.
9. Abstract of report sent to auditor—Record.
10. Where names are alike.
11. Auditor's record of names, etc.
12. First town election.
13. Notices of first town election.
14. Conducting election.
15. Justices and constables.
16. Repealed.
17. Refusal to organize—Second election.
18. Continued refusal.
19. Failure to qualify.
20. When part of county not organized.

1. At general election.] § 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly:* That at any general election that may be holden in the several

counties in this State, the qualified voters in any county may vote for or against township organization in such county.¹ [Laws 1861, p. 216, § 1.

2. **Petition.]** § 2. The county board, on petition of fifty or more legal voters of said county, shall cause to be submitted to the voters of the county the question of township organization under this Act, by ballot, to be written or printed, or partly written and partly printed, "For township organization" or "Against township organization," to be canvassed and returned in like manner as votes for county officers.² [Laws 1861, p. 216, § 2.

3. **Returns.]** § 3. The county clerk shall enter an abstract of the returns of said election, to be made out and certified as in

(1) The Constitution concerning township organization, Art. 10, provides:

§ 5. The General Assembly shall provide, by general law, for township organization, under which any county may organize whenever a majority of the legal voters of such county, voting at any general election, shall so determine, and whenever any county shall adopt township organization, so much of this Constitution as provides for the management of fiscal concerns of the said county by the board of county commissioners may be dispensed with, and the affairs of said county may be transacted in such manner as the General Assembly may provide. And in any county that shall have adopted township organization, the question of continuing the same may be submitted to a vote of the electors of such county at a general election, in the manner that now is or may be provided by law; and if a majority of all the votes cast upon that question shall be against township organization, then such organization shall cease in said county; and all laws in force in relation to counties not having township organization, shall immediately take effect and be in force in such county. No two townships shall have the same name, and the day of holding the annual township meeting shall be uniform throughout the State.

§ 6. At the first election of county judges under this Constitution, there shall be elected in each of the counties in this State, not under township organization, three officers, who shall be styled "the board of county commissioners," who shall hold sessions for the transaction of county business as shall be provided by law. One of said commissioners shall hold his office for one year, one for two years, and one for three years, to be determined by lot; and every year thereafter one such officer shall be elected in each of said counties for the term of three years.

§ 7. The county affairs of Cook county shall be managed by a board of commissioners of fifteen persons, ten of whom shall be elected from the city of Chicago, and five from towns outside of said city, in such manner as may be provided by law.

The power to hold elections for adoption of township organization flows from the action of the county board. It is not vested in the clerk or other officer; their acts, unauthorized, would confer no power to hold an election; but when the body has acted who possess the power, and the officer acting under their requirements give the notice, then the authority of the law has been invoked and properly put into action. The statute does not require the order of the county board, submitting the question of township organization to a vote of the people, to be spread on the record. If this is neglected, the subsequent action of the county board to that effect sufficiently proves the making of such order. The neglect of the clerk to enter the order should not have the effect to defeat the will of the people. *People ex rel. v. Garner*, 47 Ill. R., 247.

(2) *Form of Petition to County Board for Township Organization.*

To the honorable the county board of the county of —, State of Illinois:

The undersigned, legal voters of said county of —, would respectfully represent, that in their opinion the people of said county desire to adopt township organization; they do therefore petition your honorable board to cause to be submitted to the voters of said county, at the next general election, to be held on the first Tuesday after the first Monday in November next, the question of township organization, that they may vote upon the adoption thereof.

And your petitioners will ever pray.

Dated this — day of —, A. D. 19—.

elections for county officers, record the same at length upon the records of the county, and shall certify the same to the auditor of public accounts. [Laws 1861, p. 216, § 3.

4. When township government commences—Majority vote defined.] § 4. If it shall appear by the returns of said election that a majority of the legal voters of said county are for township organization, then, the county so voting in favor of its adoption shall be governed by and subject to the provisions of this Act on and after the first Tuesday of April next succeeding; *Provided*, that a majority of the voters voting at such election shall be taken and deemed a majority of the voters of said county.¹ [Laws 1861, p. 216, § 4.

5. Commissioners appointed.] § 5. The county board shall, at its next session, appoint three commissioners, residents of the county, to divide the county into towns. The commissioners so appointed shall be paid for their services by the county.² [Laws 1861, p. 216, § 5.

(1) The right of a county to adopt township organization, under the provisions of our Constitution, is expressly made to depend upon an affirmative vote of a majority of all the citizens within the county entitled to vote on the question. The legislature does not possess the power to provide any other mode of township organization than as prescribed by the Constitution. The power of the county board over the affairs of the county, continues until the township organization is adopted by an affirmative vote of a majority of all the legal voters of a county. *People v. Brown et al.*, 11 Ill. R., 478. This decision was made under the township act of 1849, which was substantially the same as this act on the subject in question, except that by this act it is provided that a majority of the voters voting at such election shall be taken and deemed a majority of the voters of said county; which is settling the question of evidence, by which to determine the majority of legal voters of the county at the time of taking the vote. See also *People v. Warfield*, 20 Ill. R., 159.

A question arises as to the mode of ascertaining whether a majority of the voters of a county have cast their votes for township organization. The registry list of voters is no better evidence of the number of legal voters in a district or county than the poll-books. The vote cast is *prima facie* evidence of not only the result of the election, but also of the number of legal voters in the county. The registry lists do not rebut or overcome this presumption. Persons whose names are put upon the registry list, but who do not appear and vote at an election, are presumed to have left the election district, and therefore no longer legal voters therein. *The People ex rel. v. Garner*, 47 Ill. R., 247.

The legislature has no power to impose a general township organization upon the people of a county, in any other manner than that provided in the Constitution (see *People v. Brown*, 11 Ill. R., 478), which is by vote of the people. Yet it seems, in the absence of any prohibition, the legislature may provide for the incorporation of a town for municipal purposes six miles square in extent, as well as a village with less territory. *Greeley et al. v. the People*, 60, Ill. R., 19.

(2) There is no appeal from the order of the county board in declaring township organization adopted, or in appointing commissioners to divide the county into towns. The law in regard to appeals from orders of that board does not apply to that case. Where the question of township organization was submitted and declared adopted, and commissioners appointed to divide the county into towns, but no action was had, and the matter was again submitted after the lapse of several years, and it was again declared in the affirmative, and commissioners, to divide the county into towns, were again appointed who performed their duties, and the county organized accordingly: Held, that the proceeding was valid. That if the last election was invalid the commissioners would be regarded as being appointed under the first vote, which would be regarded as still in force for that purpose, notwithstanding the lapse of time and the second submission. *People ex rel. v. Garner*, 47 Ill. R., 247.

6. Division of county into towns.] § 6. The commissioners so appointed shall proceed to divide such county into towns, making them conform to the townships according to government surveys. Fractional townships may be attached to adjoining towns, where the number of the inhabitants or the amount of territory thereof shall not be sufficient for a separate town. Where a township shall have too few inhabitants for a separate organization, then such township may be added to some adjoining town, or divided between two or more towns, for the time being. And when a creek or river so divides a township that it is inconvenient for transacting town business, then such creek or river may be made the town boundary, and the fractions so formed may be disposed of as other fractional townships.¹ [Laws 1861, p. 217, § 6.]

7. Naming of towns.] § 7. Towns shall be named in accordance with the express wish of the inhabitants of the town, and if there shall not be a degree of unanimity as to the name, the commissioners may designate the name: *Provided*, that the county board shall have power to change the name of any town in their respective counties, upon a petition of a majority of the voters of said town: *And, provided further*, that no two towns in the State shall have the same name. [Laws 1861, p. 217, § 7; Laws 1859, p. 129, § 1.]

8. Report of commissioners.] § 8. The commissioners so appointed shall make a written report of their proceedings, giving the names and bounds of each town, and present such report to the county clerk on or before the first day of March next succeeding.² [Laws 1861, p. 217, § 8.]

(1) In the division of a county into towns by the commissioners, it is the intention of the law that it shall be made in accordance with the lines of the surveyed or government townships so that each government township shall be set off and erected as an organized town under this act, and it is the duty of the commissioners to divide the county accordingly; it would seem that they have not authority to divide it otherwise. The instances where they can depart from this rule are clearly expressed in the above section. The powers of the board of supervisors subsequently to create new towns and change town boundaries, are not thus restricted. See Art. III, § 1, post.

In dividing the county into towns the law has laid down a rule to be observed. If the commissioners depart from what is believed to be the intention of the law, and exceptions are taken to their report on return, the county board would perhaps have power to reject it, and recommit the matter for further action of the commissioners. If this is not done the report will be regarded as regular, and no question can thereafter be raised to defeat it in that regard. *People ex rel. v. Garner*, 47 Ill. R., 247.

(2) *Form of Report of Proceedings of Commissioners appointed to Divide County into Towns.*

To the honorable the county board of the county of—, State of Illinois.

The undersigned, commissioners appointed by said board, at the December term thereof, A. D. 19—, to divide said county of — into towns, agreeably to the statute to provide for township organization, respectfully

9. **Abstract of report sent to auditor—Record.]** § 9. The county clerk shall, within thirty days after receiving such report of the commissioners, transmit by mail to the auditor of public accounts of this State, an abstract of such report, giving the bounds of each town and the name designated, and said clerk shall record, in a book kept for that purpose, the report of said commissioners. [Laws 1861, p. 217, § 10]

10. **Where names are alike.]** § 10. If the auditor of public accounts, on comparing the abstracts of the reports from the several counties, shall find that any two or more towns are named alike, he shall so inform the clerk of the county which last adopted such name, and the county board of such county shall, at its next meeting thereafter, adopt for such town some different name; and when such name shall be adopted, the county clerk shall inform the auditor of public accounts, as before directed. [Laws 1861, p. 217, § 11.]

11. **Auditor's record of names, etc.]** § 11. The auditor of public accounts shall keep a record of the names and boundaries of the several towns [Laws 1861, p. 218, § 12.]

12. **First town election.]** § 12. The county board shall, at least twenty days before the first Tuesday in April next after the adoption of township organization, designate some central and convenient place in each town for the holding of the first town election, and shall also appoint three suitable electors of the town as judges of said elections.

13. **Notice of first town election.]** § 13. The county clerk shall thereupon make out notices, stating the time (which shall be the first Tuesday of April thereafter) and place for holding the first town election, and the names of the judges of election so appointed, and deliver such notices to the sheriff of the county, who shall cause the same to be posted in not less than

report that they have performed the duty assigned to them, and have divided said county into towns, and given names thereto as follows to-wit:

All that territory known and described by government survey as township number —, of range number —, is erected into a town to be called the town of —.

All that territory known and described, etc., [*continue by describing each town as aforesaid.*]

All of which is respectfully submitted.

A. B., }
C. D., } Commissioners.
E. F., }

Towns, although duly described and named by the commissioners, would not attain to the full power of such corporations until a completion of their organization by the election of town officers. *Wells v. Burbank*, 17 N. Hamp. R., 393.

The supreme court will take judicial notice of the fact that a county has adopted township organization. *County of Rock Island v. State*, 31 Ill. R., 543.

three of the most public places of the town, and not less than fifteen days before the time of the holding of such election.¹ [Laws 1861, p. 217, § 9.]

14. Conducting election.] § 14. The first town election shall be conducted in the same manner as other town elections.

15. Justice and constables.] § 15. The justices of the peace, and constables residing in any town organized pursuant to this Act, shall continue to hold their office for the time for which they were elected, and shall be considered as justices of the peace and constables of such town; but if the number of justices of the peace and constables allowed by law shall not reside in any such new town, the electors thereof may, at the first town election, elect a sufficient number of justices and constables, who shall hold their offices until the next election at which justices of the peace and constables may be elected, as provided by law, and until their successors are elected and qualified.

16. Repealed.] See laws 1913, p. 581; "Roads and Bridges," § 169, post.

17. Refusal to organize—Second election.] § 17. If any town shall refuse or neglect to organize and elect town officers, the county board of the county may order another election for that purpose, and state the time and place of holding the same, notice of such election to be given as required for the first election. [Laws 1861, p. 219, § 2.]

18. Continued refusal.] § 18. If the town shall not then organize and elect officers, the board may, at any regular or special meeting, appoint the necessary officers for such town, and the persons so appointed shall hold their offices until the next annual town meeting, and until their successors are elected or appointed and qualified. [Laws 1861, p. 219, § 2.]

(1) *Form of Notice by County Clerk for First Town Election.*

TOWN ELECTION NOTICE.

Public notice is hereby given that the first town election under township organization for the town of —, in the county of —, and State of Illinois, will be held in said town on Tuesday, the — day of April, A. D. 19—, being the first Tuesday in said month, at [give the place designated for holding the election of [give title of the several offices to be filled], which election will be opened at the hour of 7 A. M. and continue open until the hour of 5 P. M. that day. The names of the judges of election are [give their names.]

Dated at.....this.....day of....., A. D. 19....

....., Town Clerk.

19. Failure to qualify.] § 19. If the persons so appointed shall fail to qualify, as required by law, or if at any time after the organization of the town, the electors thereof refuse to elect or appoint officers, or to exercise the powers required by law, the county board may annex such town to an adjoining town, and the town so annexed shall thereafter constitute a part of the town to which it is annexed. [Laws 1861, p. 219, § 3.]

20. When part of county not organized.] § 20. When, in any county under township organization, there is any territory co-extensive with the limits of a city or village, situated therein, and which is not included within any organized town, such territory shall constitute a town by the name of such city or village, and all provisions of this Act shall apply to the town so constituted, the same as if it had been organized in the manner provided in this Act in the case of the organization of new towns. [As amended by Act approved May 25, 1911. In force July 1, 1911. Laws 1911, p. 538.]

ARTICLE II.

HOW DISCONTINUED.

21. Petition—Election.
22. Result of election.
23. Election of county commissioners.
24. When commissioners assume duties, etc.
25. Disposition of town records, business, property, etc.

21. Petition—Election.] § 1. Upon the petition of at least one-fifth of the legal voters of any county having adopted township organization, to be ascertained by the vote cast at the last preceding presidential election, the county board shall cause to be submitted to the voters of such county, at the next general election, the question of the continuance of township organization, to be voted on by ballots, written or printed, or partly written and partly printed, “For the continuance of township organization,” or “Against the continuance of township organization;” notice to be given, and the votes to be canvassed and returns made in like manner as in this Act provided in reference to a vote on the adoption of township organization.¹ [Laws 1861, p. 265, § 4.]

22. Result of election.] § 2. If it shall appear, by the returns of said election, that a majority of the votes cast on that question, at said election, are against the continuance of township organization, then such organization shall cease in said county, as soon as a county board is elected and qualified; and all laws relating to counties not under township organization, shall be applicable to such county, the same as if township organization had never been adopted in it. [Laws 1861, p. 265, § 5.]

23. Election of County Commissioners.] § 3. When township organization shall cease in any county, as provided in this Act, a special election shall be held in such county on the first Monday of January next following, for three county commissioners, one of whom shall hold his office until the next general election of county

(1) The legislature has no authority to repeal the law for township organization unless it adopts the same course and provides the same guaranties to protect the rights of all, required by the Constitution to be observed in the adoption of the township system. *People v. Couchman*, 15 Ill. R., 142.

The question of discontinuing township organization can only be submitted to a vote of the electors of such county at a general election. The annual town meeting is not a general election within the meaning of § 5 Art. 10 of the Constitution. Opinion Attorney-General Edsall, March 6, 1873.

commissioners, one until a year from the next general election, and the other until two years after the next general election, to be determined by lot, and until their successors are elected and qualified; and at every yearly general election after such special election, one such officer shall be elected. [Laws 1861, p. 266, § 6.]

24. When commissioners assume duties, etc.] § 4. The county board elected at the special election, as provided in the next preceding section, shall assume the duties of their office on the first Monday of February next after their election, and shall be the legal successors of the county board of such county, and shall have all the rights and emoluments, and be subject to all the liabilities as provided in other cases of counties not under township organization.

25. Disposition of town records, business, property, etc.] § 5. When township organization is discontinued in any county, the records of the several towns shall be deposited in the county clerk's office, and the county commissioners of the county shall have power to close up all unfinished business of the several towns, and sell and dispose of any of the property belonging to the town, for the benefit of the inhabitants thereof, as fully as might have been done by the towns themselves, and to pay all the indebtedness of any town existing at the time of such discontinuance, and cause the amount thereof, or so much as may be necessary, to be levied upon the property of the town.

ARTICLE III.

OF THE ALTERATION OF BOUNDARIES, AND DIVISION OF TOWNS AND
TOWN PROPERTY.

26. Powers of county board.
27. Election in new town or towns.
28. Terms of officers.
29. Taxes.
30. Disposition of real estate on division of towns.
31. Disposition of real estate on annexation of towns.
32. Disposition of personal property.
33. Meeting of supervisors and assessors.
34. Burial grounds.
35. Apportionment of debts.
36. Disputes submitted to county board.
37. Proceedings to unite towns.

26. Powers of the County Board.] § 1. The county board or board of supervisors of each county, shall have jurisdiction to alter the boundaries of towns, to change town lines and to divide, enlarge and create new towns in their respective counties; and the county board or board of supervisors may make alterations of the town boundaries and create a new town whenever, in any territory of not less than sixteen square miles, three-fourths or more of the voters resident in such territory shall petition for such new town: *Provided, however,* That such new territory proposed to be organized into a new town shall contain at least two hundred legal voters: *Provided, further,* That the respective remaining portions of each of the towns from which such new town shall be taken shall also contain not less than two hundred legal voters and not less than sixteen square miles and that a majority of the legal voters resident in each of such remaining portions of such towns respectively shall likewise join in such petition for the formation of such new town by signing the same: *Provided, however,* The county board or board of supervisors shall give notice thereof by posting up notices in not less than five of the most public places of the town interested, at least sixty days before their final action; also by publishing such notice at least three times in some newspaper published in the county wherein said towns are situated, if any shall be published therein: *Provided, further,* That no incorporated town shall be divided, except consent

thereto is given by a majority of all the electors in said town, notice that the question of dividing the said town will be submitted to the legal voters thereof having been given by the county clerk at the same time and in the same manner as the notice of general elections. [As amended by Act approved June 28, 1913. In force July 1, 1913. Laws 1913, p. 607.]

27. Election in new town or towns.] § 2. When two or more towns are united into one, and when a town is divided into two or more towns, a new election shall be ordered in said new town or towns by the county board, and the time and place of holding the election shall be fixed, and judges of election appointed, and notice given in the same manner as required by law upon the first organization of towns: *Provided*, That when parts of several towns are taken to make a new town, it shall not be necessary to order an election in the towns from which territory is taken, but if any of the officers thereof shall continue to reside in the new town, his office shall be declared vacant, and

Form of Petition for Alteration of Boundaries, Change of Town Lines, or Enlarging a Town.

To the honorable the county board of the county of —, State of Illinois:

The legal voters of the town of —, in said county, do petition your honorable board to alter the boundaries of said town of —, as follows [*here set forth the alteration desired*]. Such alteration of boundaries will not affect any town so that the territory thereof will be less than — square miles.

And your petitioners will ever pray.

The words change town lines, or enlarge a town, can be substituted in lieu of the words alter the boundaries of, in the foregoing form, when deemed more appropriate.

Form of Petition for Dividing a Town.

To the honorable the county board of the county of —, State of Illinois:

The undersigned legal voters of the town of —, in said county, do petition your honorable board to divide said town as follows [*here set forth the line of division as desired*]. That the territory within the following boundaries [*state the same*] shall continue to form and exist as the said town of —, and that the territory within the following boundaries [*state the same*] shall form a new town, to be named the town of —; that the territory of each of said towns will not be less than — square miles.

And your petitioners will ever pray.

The foregoing form can be changed to suit the occasion of the creation of a new town.

The law contemplates, in case of alteration of boundaries, that it shall be petitioned for by at least half the legal voters of each town affected.

Form of Notice of Creating New Town, Dividing Town, or Changing Boundaries of Town.

Public notice is hereby given that petitions will be presented to the county board of the county of —, State of Illinois, at the session thereof

filled as in other cases of vacancy. [As amended by Act approved June 15, 1887; in force July 1, 1887. Laws 1887, p. 300.]

28. **Terms of officers.] § 3.** The officers elected or appointed at any such town meeting, shall hold their offices until the next annual town meeting, and until their successors are elected and qualified; except that one of the highway commissioners so elected shall hold his office until the next annual meeting, one until the second annual meeting, and the other until the third annual meeting, to be determined between them by lot, and until their successors are elected and qualified, and except that any justice of the peace or constable so elected shall hold his office until the next general election of justices and constables, as fixed by law.

29. **Taxes.] § 8.** The union of two or more towns, or the division or alteration of a town, after the making out of the assessor's books in any year, shall not in any manner affect the assessment or collection of the taxes assessable and collectable in that year, but the same may be assessed and collected in the same manner and by the same officers as if no division, union or alteration had taken place. [As amended by Act

to be held at ———, on the ——— day of ———, A. D. 19—, praying for [*state what is petitioned for as set forth in the petitions*]; and that final action of the board will be asked, on said petitions, at the time of presentation thereof. Dated this———day of———, A. D. 19——.

The foregoing is held to be the proper form of notice. It is not required to be given by the county clerk. Neither is it necessary to be signed by any one. Nor is the county board required to give notice of the proposed action. *Town of Woo Sung v. The People*, 102 Ill. R., 648. In this case the Supreme Court recognize Haines' Township Organization Laws as authority.

The county board can divide a township only at a regular meeting, and upon sixty days' notice; and an order for this purpose, that the separation or division shall not take effect until the next annual election of town officers, is authorized, and is in accordance with the statute. *Sup. and Assessor of Hensley Township v. The People ex rel., Barley*, 84 Ill. R., 544. On an application by the required number of legal voters to the county board to set off a new town, the published copy of notice need not contain the subscription of the names. *People v. Carpenter*, 24 N. Y. R., 86.

The act of the county board in dividing a town and setting off a new one, described only the dividing line. Held, that its uncertainty was cured by its reference to the application and notices preliminary to its passage, in which the tract south of the dividing line was designated for the new town; also by proof that the first town meeting ordered to be called for this new town was summoned to a place south of said line, and was composed wholly of men residing south of said line. *People v. Carpenter*, 24 N. Y. R., 86.

The proviso in the statute giving the county board power to form new towns, and to divide or enlarge towns, requiring a vote in case an incorporated town is to be divided, refers to incorporated towns and villages and not to towns under the township organization law; and where no such incorporated town or village is to be divided, by any change of boundaries or the formation of a new town, no vote is required. *Harris et al. v. Schryock et al.*, 82 Ill. R., 119. See also *Town of Woo Sung v. The People*, 102 Ill. R., 648.

Under the law prohibiting the creation of a new town of less territory than seventeen square miles, where a town is divided, each part of the two towns resulting from the division must contain the requisite territory. In such case, both the towns become new ones formed from the old one. *Town of Jefferson v. The People ex rel., Barley*, 84 Ill. R., 544.

approved June 15, 1887. In force July 1, 1887. Laws 1887, p. 300.

30. Disposition of real estate on division of towns.] § 5. When a town possessed of real estate shall be divided into two or more towns, the supervisors and assessors of the several towns constituted by such division shall meet as soon as may be after the first town meeting subsequently held in such towns, and when so met shall have power to make such agreement concerning the disposition to be made of such town property and the apportionment of the proceeds as shall be equitable, and to take all measures and execute all conveyances which may be necessary to carry such agreement into effect.¹ [Laws 1861, p. 219, § 4.]

(1) *Form of Agreement by Supervisors and Assessors, in case of Division of Town, concerning Disposition and Apportionment of Real estate.*

This agreement, made this——day of——, A. D. 19——, by A. B., supervisor, and C. D., assessor of the town of——, on the part of said town, and E. F., supervisor, G. H., assessor of the town of——, on the part of said town of——, in the county of——, and State of Illinois, witnesseth. That, whereas, the town of——, which formerly comprised the territory now composing the aforesaid towns of —— and ——, has lately been divided by proper authority, into two towns, named and styled as aforesaid, [*or as the case may be*], and whereas said town of——was at such division thereof seized of the following real estate, to wit: [*here describe the premises*]. Now therefore it is agreed by and between said supervisors and assessors on the part of their respective towns, that said real estate be divided and disposed of for the benefit of said towns, as follows: that portion thereof described as follows [*here describe it*], shall be and remain the property of said town of——, and the balance thereof described as follows [*here describe the remaining portion of said premises*], be sold within *three* months from this date for the highest sum which the same can be sold for, and the proceeds thereof be paid over to said town of——

In witness whereof said supervisors and assessors have hereunto set their hands and private seals, the day and year first above written.

A. B., [SEAL.]
Supervisor.
C. D., [SEAL.]
Assessor.
E. F., [SEAL.]
Supervisor.
G. H., [SEAL.]
Assessor.

The foregoing form can be varied to suit the circumstances of each case. Whatever agreement is made by the supervisors and assessors, should be reduced to writing in proper form, and a copy filed with the town clerk of each town interested. When a division of the property is impracticable, it may be appraised by the supervisors and assessors, and the town wherein it is situated may pay over to the other town its equitable share of the valuation and retain the whole property, when such course is deemed most advisable. It will be seen that the law has clothed the supervisors and assessors with ample authority for a proper division of the real estate; it has authorized them to make agreement concerning the disposition thereof, and such apportionment of proceeds as shall be equitable, and to take all measures

31. **Disposition of real estate on annexation of towns.] § 6.** When two or more towns possessed of real estate shall be united, or when a part of any town possessed of real estate shall be annexed to another town or towns, or taken to form a part of a new town, the supervisors and assessors of the town, so united, or of the town from which such territory is taken, and of the town or towns to which the same shall be annexed, or of which it shall constitute a part, shall, as soon as may be after such alteration

and execute all conveyances necessary to carry their agreement into effect; therefore when it is agreed that the property or any part thereof shall be sold, the supervisors and assessors are authorized to execute the conveyance. A question may arise as to who should execute the conveyance, whether the supervisor or assessor of the town wherein the real estate is situated, in case of lying all in one town, or whether by the supervisors and assessors of the several towns interested. It can do no harm for them all to join in the conveyance. Indeed, such may be the more proper course.

Form of Deed of Conveyance by Supervisors and Assessors Conveying Real Estate where Town is Divided.

This indenture, made this — day of —, A. D. 19—, between A. B., supervisor, and C. D., assessor, of the town of —, E. F., supervisor, and G. H., assessor of the town of —, which towns are in the county of —, and State of Illinois, party of the first part, and L. M., of said county and State, party of the second part, witnesseth: That, whereas, said town of — has lately been divided by proper authority, and said town of — erected therefrom [*or as the case may be*], and whereas said town of — was at the time of such division seized of the following real estate [*here describe the whole premises*], and whereas it was agreed by the supervisors and assessors of each of the aforesaid towns, that the following portion of said real estate should be disposed of for the benefit of said town of — [*or as the agreement may be*], as being the equitable share thereof to which said town would be entitled in consequence of such division, to-wit: [*here describe the portion of the premises to be disposed of*]. Now, therefore, said party of the first part, for and in consideration of the sum of — dollars paid by said party of the second part, the receipt whereof is hereby acknowledged, have and do grant, remise, release, convey and confirm unto said party of the second part, and to his heirs and assigns forever, all the following described premises, lying and being in said town of —, in the county of —, and State of Illinois, to-wit, [*here describe the premises to be conveyed*]. To have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging or in any wise appertaining, and all the estate, right, title, interest and claim whatever which said town of — and —, or either of them may have either in law or equity, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever.

In witness whereof, said party of the first part have hereunto set their hands and seals, the day and year first above written.

Signed, sealed and delivered }
in the presence of }

A. B., [SEAL.]
Supervisor.

C. D., [SEAL.]
Assessor.

E. F., [SEAL.]
Supervisor.

G. H., [SEAL.]
Assessor.

The foregoing deed should be acknowledged in the usual form.

meet for the purpose and possess the powers provided in the last preceding section [As amended by Act approved June 15, 1887; in force July 1, 1887. Laws 1887, p. 301.

32. Disposition of personal property.] § 7. When two or more towns, any one or more of which are possessed of or entitled to, moneys, rights or credits or other personal estate, shall be united, or when a town possessed of, or entitled to, moneys, rights or credits or other personal estate shall be divided or altered, such personal estate, including moneys, shall be apportioned between the towns interested therein, by the supervisors and assessors of such towns according to the amount of taxable property in the town or towns united, divided or altered, as the same existed immediately before such union, division or alteration, to be ascertained by the last assessment list of such town; and such supervisors and assessors shall meet for the purpose aforesaid as soon as may be, after such union, division or alteration.¹ [As amended by Act approved June 15, 1887; in force July 1, 1887. Laws 1887, p. 301.

(1) The proceedings of the supervisors and assessors ought properly to be reduced to writing, as a memorandum showing how and in what manner the money, rights, credits, and other personal property is disposed of or apportioned, and how existing debts are apportioned and a copy filed with other papers, if any, with the town clerk of such town interested. The following is suggested as a form for such writing or memorandum:

Form of Proceedings of Supervisors and Assessors in Apportioning Property in case of Division of Towns.

At a meeting of the supervisors and assessors of the towns of ——— and ———, in the county of ———, convened at the *office of the town clerk of said town of ———*, on the ——— day of ———, A. D. 19—, [*if adjournments are had state the adjournment*], for the purpose of making agreement concerning the disposition of the real estate lately belonging to said town of ———, and apportioning the proceeds thereof according to law in such cases, in consequence of a division of the original town of ———; also for the purpose of apportioning between said towns, the money, rights, credits and other personal property lately belonging to, and debts owing by said town of ———, the following proceedings were had. The real estate of said original town of ——— was ordered to be disposed of and proceeds apportioned according to written agreement between said supervisors and assessors, dated ———. Said town was found to be possessed of money to the amount of ——— dollars, which was apportioned as follows [*state how apportioned*]. Said town was found to be entitled to money arising from [*state the source from which the money is to be derived*] to the amount of ——— dollars, which was apportioned as follows, [*state how apportioned and continue in like manner setting forth all rights, credits and personal property of the town, and debts owing, and how apportioned between the towns.*]

A. B., Supervisor of the
town of ———.

C. D., Assessor of the
town of ———.

E. F., Supervisor of the
town of ———.

G. H., Assessor of the
town of ———.

33. **Meeting of supervisors and assessors.]** § 8. Whenever a meeting of the supervisors and assessors of two or more towns shall be required, in order to carry into effect the provisions of this article, such meeting may be called by either of said supervisors; but the supervisor calling the same shall give at least ten days' notice in writing, to all the other officers, of the time and place at which such meeting is to be held.¹ [Laws 1861, p. 220, § 7.]

34. **Burial grounds.]** § 9. The preceding section shall not, however, apply to any cemetery or burial ground, but the same shall belong to the town within which it may be situated after a division shall have been made. [Laws 1861, p. 220, § 9.]

35. **Apportionment of debts.]** § 10. Debts owing by a town or towns so united, sub-divided or altered, shall be apportioned in the same manner as the personal property of the town, and each town shall thereafter be charged with its share of such debts according to such apportionment.² [As amended by Act approved June 15, 1887; in force July 1, 1887. Laws 1887, p. 308.]

36. **Disputes submitted to county court.]** § 11. When the several towns cannot agree in relation to a division or apportionment of the real or personal property, or debts, or any part thereof as provided in the six preceding sections, the dispute shall be

(1) *Form of Notice by Supervisor to other officers to Meet and Apportion Property in case of Division or Alteration of Town.*

To ———, supervisor [*or assessor*] of the town of ———, county of ———:

You are hereby notified that a meeting of the supervisors and assessors of the towns of ——— and ———, will be held at [*state the place where*], on *Monday*, the ——— day of ———, A. D. 19—, at the hour of *ten o'clock* in the *forenoon*, for the purpose of making agreement concerning the disposition of the real estate lately belonging to said town of ———, and apportioning the proceeds thereof according to the law in such cases, in consequence of a division of the original town of ———, and the erection therefrom of the town of ———; also for the purpose of apportioning between said towns the money, rights, credits and other personal property, lately belonging to said town of ———, at which time and place you are respectfully requested to attend.

Dated at ———, this ——— day of ———, A. D. 19—.

J. W. H..

Supervisor of the town of ———.

(2) The legislature, on the division of a town, may provide, as one of the conditions or terms of the division, that any burdens, to which the whole inhabitants would be subjected by the operation of the general laws in force at the time, shall be apportioned between the towns, so that they will still be borne by the whole inhabitants who would have been subjected to them but for the division, and in doing this, they may fix the relative proportion between the towns. *Londonderry v. Derry*, 8 N. Hamp. R., 320.

Where, after the division of a township, the town boards have met, and determined the amount of the township indebtedness to be paid by the new township, such amount is a fixed and liquidated demand against such new township, which it is the duty of its town board to allow, and the clerk to issue his certificate for payment as in other cases. In case the board refuse to act, mandamus is the proper remedy. *Marathon v. Oregon*, 8 Mich. R., 372.

submitted to the county court of the county, whose decision in the matter shall be conclusive between the parties. The court shall hear and determine the matter in a summary manner, without pleadings, and shall pronounce judgment as the right of the case may be.³ [As amended by Act approved June 15, 1887; in force July 1, 1887. Laws of 1887, p. 301.]

37. **Proceedings to unite towns.]** § 12. The county board of each county shall have full power and jurisdiction to unite into one town two or more contiguous towns, whether incorporated under any special or general Act, or organized under this Act, and to disconnect territory from one of such towns and annex the same to another. But no such towns shall be united, nor shall territory be taken from one such town and at the same time annexed to another, excepting in the following manner, that is to say: After the petition hereby required shall have been presented to the county board for the union of such towns or for disconnecting territory from one of such towns and annexing the same to another, said county board shall cause to be submitted to the voters of said towns at a general annual election to be holden in each of said towns the question of uniting, or of disconnection and annexation: *Provided*, That no territory shall be taken from one such town and at the same time united to another unless such territory be at least one-half ($\frac{1}{2}$) square mile in extent, and contain at least one thousand (1,000) inhabitants. Where it is proposed to unite two or more contiguous towns under this section, said petition shall be signed by at least one-fourth of the voters of each of the towns sought to be united: *Provided*, That if in any town the number of voters exceed four hundred

(3) The submission of the question of division or apportionment of the property under the above section, in case of disagreement, should properly be in writing stating the facts, signed by the supervisors and assessors, or verified by some person having authority in the premises. The following may be the form of such submission:

Form to Submit Question of Division of Property by County Court in Case of Disagreement.

To the honorable the county court of the county of —, State of Illinois:

The undersigned, the supervisor and assessor, of the town of —, and the supervisor and assessor of the town of —, of the county aforesaid, respectfully represent to your honorable court that the town of —, which formerly comprised the territory now composing the aforesaid towns of — and —, has lately been divided by proper authority, into two towns named and styled as aforesaid, [or as the case may be], and whereas said town of — was at such division thereof seized of the following real estate [or as the case may be], to-wit: [here describe the premises], and that said towns cannot agree in relation to a division of said real estate [or as the case may be]; the matter is therefore submitted to your honorable court for your decision, pursuant to the statute in such case made and provided.

Dated this — day of —, A. D. 19—.

[To be signed by supervisor of each township.]

(400) at the last general election, then by one hundred of the voters in such town. Where it is sought to disconnect part of the territory from one town and annex the same to a contiguous town, such petition shall be signed by at least one-fourth of the voters of the territory sought to be disconnected from one town and annexed to the contiguous town, or if such territory contains more than four hundred (400) voters at the last general election, then by one hundred (100) of such voters. (1.) Notice of the election hereby required shall be given by causing notices thereof to be posted up in five public places in each of said towns at least twenty (20) days before such election, and by publishing the same in at least one newspaper (if any there be published), in each of said towns or a newspaper published in said county. The ballots cast at such election to be written or printed, or partly written and partly printed, "for uniting," or "against uniting," or "for annexation," or "against annexation," respectively, to be canvassed in like manner as votes for county officers and returned to the county board, who shall cause the votes to be canvassed. If a majority of voters of each town voting upon the question of union at such election shall vote for uniting such towns, such county board, at the meeting of which such vote is canvassed, or at the next succeeding meeting, shall proceed to declare such towns united, and give the united towns a name and define the boundaries thereof: *Provided*, That the officers of each such towns shall continue to hold their respective offices and discharge the duties thereof during the remainder of the term for which they were respectively elected: *And, provided*, That the commissioners of highways, if there be such, in each of said towns in office at the time of such union, shall continue in and discharge the duties of their respective offices during the remainder of the terms for which they were elected, and in the discharge of their duties shall act in conjunction: *And, provided further*, That the union of such towns shall not be complete until the expiration of the terms of all officers in said towns who are elected to serve for the period of one year. If a majority of the voters in each town voting upon the question of disconnection of territory from one such town and annexation to the other at such election shall vote for the annexation, such county board at the

(1) *Form of Petition to County Board.*

To the honorable the county board of _____ county, Illinois:

The undersigned, being one-fourth [or 100, as the statute requires] of the voters in each of the townships of _____ and _____, [or in that part of the township of _____, which it is proposed to annex to another] petition your honorable board to consolidate said townships in one [or to annex the described part of _____ to the township of _____, as the case may be].

meeting at which such votes are canvassed, or at the next succeeding meeting, shall proceed to declare such territory disconnected from the town of which it formerly formed a part, and united to the contiguous town to which it sought to be annexed: *Provided*, That the officers of the town to which such territory is annexed shall thereupon constitute the town officers of such territory. Where the alteration or division or union of towns necessitates a change in any school district, it shall be the duty of the officers having charge of the school property therein to proceed to make an adjustment of the property and debts thereof, as in the case of the alteration of school districts. After the declaration by the county board of the union or annexation herein provided for, it shall be the duty of the officers specified in this article to meet for the purpose of adjusting the assets and debts of said towns. If the town or part thereof which may be joined to an incorporated city under this section is also an incorporated town or village or part of the same, and such incorporated town or village has property or debts, then the property and debts and rights of such incorporated town or village shall be adjusted by the same officers and in the same manner as provided in this article: *And, provided further*, That all ordinances for the regulation or restraint of the sale of intoxicating liquors which shall be in force in the whole or any part of said annexed territory at the time of said annexation shall continue in force therein and shall not be repealed except upon the petition of one hundred (100) householders within said prohibited portion, and a vote for such repeal of the majority of all the aldermen of the common council of the city to which such territory shall be annexed, including the vote therefor of the aldermen in whose ward said prohibited district shall then, wholly or in part, lie: *And, provided further*, That when the county board of commissioners wish to consolidate a town in which the corporate authorities are authorized to assess, levy and receive taxes for park purposes, such county board shall first submit to the legal voters of the town at an election to be held on the Tuesday after the first Monday in November the question whether such town shall be established and continued as a park district for park purposes. And when such park shall be located in such town and also in another town adjoining thereto, the question shall be submitted to the voters of each of such towns in which a park shall be located, whether such town shall be established and continued as a park district, at an election to be held on Tuesday after the first Monday of November. The tickets shall be written or printed "For park district" or "Against park district." And if a majority of the votes cast at the election on that subject in each town shall be for a park district, then the

park district shall be deemed as established, and the park commissioners, appointed and authorized by law, shall thereupon be the corporate authorities of such park district and shall have and exercise all the power and authority and perform all the duties enjoined by law on the corporate authorities of such town or towns for the establishment and maintenance of the park and for the discharge of all debts, bonds, obligations and contracts of such town for park purposes. The mode of conducting such election, the returns thereof and the notices therefor, the canvassing and contesting the same, shall be as nearly as may be as in the case of county officers. If such park district is established as aforesaid, then the county may proceed to consolidate said town with another town or towns or change the boundaries thereof, but if such park district is not established as aforesaid, then there shall be no authority in the county board to consolidate such town or towns with another town or towns:

Provided, That where lands lie wholly outside of and not adjoining the limits of an incorporated city or village, whenever a majority of the land owners residing within such territory shall petition the county board to take such territory from one town and unite it with another town, the county board shall have full power to disconnect such territory from one town and annex it to another town, as prayed for in such petition, without regard to extent of territory or number of inhabitants, but no town shall be reduced in extent of territory or number of inhabitants, but no town shall be reduced in extent of territory to less than sixteen square miles. [As amended by Act Approved May 9, 1901; in force July 1, 1901. Laws 1901, p. 310.]

CONSOLIDATION OF TOWNSHIPS IN CERTAIN CITIES.

AN ACT to provide for consolidation of the territory of cities in counties under township organization having five or more congressional townships and fractional parts of congressional townships into one township, and to provide for a board of auditors of said township and locate the place wherein the Justices of the Peace shall have their offices. [Approved April 24, 1899. In force July 1, 1899. Laws 1899, p. 91.]

38. Consolidation of territory into one township—Election—Canvass of votes.

39. If majority of votes are in favor of—Election of township officers.

40. Consolidation into one organized township—Appointment of one justice from each congressional township as one of the town auditors—Where justices to hold offices.

41. Repeal.

38. Consolidation of territory into one township—Election—Canvass of votes.] § 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly: That when*

the territory of any city of the State of Illinois in counties under township organization is composed of five or more congressional townships or fractional parts of congressional townships and the legal voters of said city want to organize said territory into one township, that upon a petition of at least one-tenth of the legal voters of said city, to be ascertained by the votes cast at the last preceding presidential election, the county board of said county shall cause to be submitted to the voters of said city at the next general election the question of consolidation of the territory included in said city into one township, to be voted on by ballots, written or printed, or partly written and partly printed, "For consolidation into one township," and "Against consolidation into one township," notice to be given and the votes to be canvassed and returns made in like manner as votes for county officers.

39. If the Majority of votes are in favor of consolidation—
Election of township officers.] § 2. The county clerk shall enter an abstract of the returns of said election, to be made out and certified as in election for county officers, record the same at length upon the records of the county, and if a majority of said votes shall be in favor of consolidating all of said townships and fractional parts thereof in said city into one organized township, then at the next ensuing election for township officers there shall be elected one set of township officers for the territory in said city.

40. Consolidation into one organized township—Appointment of one justice from each congressional township as one of the town auditors—Where justices to hold their offices.] § 3. *Provided further*, whenever any city in counties under township organization having five or more congressional townships and fractional parts thereof in said city shall have been consolidated into one organized township, the judges of the courts of record of said county shall appoint one Justice of the Peace from each of the congressional townships in said city to act as one of the town auditors of said town, who shall act during the term of Justice of the Peace, and in case of vacancy, to fill the same, who, with the supervisor and town clerk, shall compose the board of auditors of said consolidated town: *Provided*, That in cities of one hundred and twenty-five thousand inhabitants the Justices of the Peace shall have their offices in the congressional township or fractional part thereof from which they are appointed or elected.

41. Repeal.] § 4. All Acts in conflict with this act are hereby repealed.

ARTICLE IV.

CORPORATE POWERS OF TOWNS, AND THE EXERCISE THEREOF—WHAT MAY BE DONE AT TOWN MEETINGS—BY-LAWS, RULES AND REGULATIONS.

- 42. Corporate name.
- 43. Corporate powers.
 - (1) To sue and be sued.
 - (2) To acquire by purchase, etc.
 - (3) To make all contracts.
- 44. Powers of town meeting.
 - (1) Orders for sales, etc., of corporate property.
 - (2) Exercise of corporate powers.
 - (3) Direct the raising of money by taxation for—
 - (Constructing or repairing roads, bridges, etc.)
 - (Prosecuting or defending suits, etc.)
 - (Any other legal purpose.)
 - (Building bridges, etc., in another town.)
 - (4) Provide for conducting suits.
 - (5) Prevent growing of Canada thistles.
 - (6) Inducement for cultivation of trees.
 - (7) Rules and regulations in regard to fences.
 - (8) Regulate the running at large of live stock.
 - (9) Establish and maintain pounds.
 - (10) Pound masters.
 - (11) Distraining and impounding of live stock.
 - (12) Public watering places.
 - (13) Prevent deposit of night soil, etc.
 - (14) By-laws, rules and regulations.
 - (15) Application of penalties.
- 45. Exception as to cities and villages.
- 46. Notice of by-laws, etc.—Taking effect.
- 47. Effect of certain conveyances.
- 48. How conveyances made.

42. Corporate name.] § 1. The corporate name of each town shall be: "Town of (name of town)," and all acts done by the town, and all actions by or against the town, shall be in its corporate name.¹ [Laws of 1861, p. 218, § 3.

(1) The Constitution of Illinois recognizes five distinct classes of municipal corporations, viz: counties, townships, cities, towns and villages. As contemplated by the Constitution, a "township" is a territorial subdivision of a county organized for

43. Corporate powers.] § 2. Every town shall have corporate capacity to exercise the powers granted thereto, or necessarily implied, and no others. It shall have power:

purposes of local government. (Const. Art. 10, § 5.) "Town" and "village" are synonymous terms, meaning the same thing, although the former is strictly applicable only to villages that were incorporated by that appellation in special charters prior to the Constitution of 1870. In our statutes concerning township organization, the word "town" is frequently employed in the sense of township, which is neither a correct use of the word nor in harmony with the constitutional prescriptions that "the general assembly shall provide for Township organization, under which any county may organize;" that "no two Townships shall have the same name;" that "the day of the annual Township meeting shall be uniform throughout the state," etc.

"A town under the Township Law is not an incorporated town within the meaning as generally given by the statutes." *Town of Woo Sung et al., v. People*, 102, Ill. 648, 654.

"An incorporated town within the meaning of the statute regulating the organization of cities and villages, is a village or small collection of residences which has become incorporated for the better regulation of their internal police, etc." *People v. Village of Harvey*, 142 Ill. 573, 576. *Martin v. The People*, 87 Ill. 524.

"'Incorporated Towns' does not refer to towns under the Township Organization law." *Harris Schryock*, 82 Ill., 119.

"A town organized under the Township Organization Law is but a quasi corporation and not an Incorporated Town, and hence is not within the meaning of the word "Town" as used in the act of 1883, concerning the licensing of dram shops in counties, cities, towns and villages." *People v. The Town of Thornton*, 186 Ill. 162.

No county, city, township, school district, or other municipal corporation, shall be allowed to become indebted in any manner or for any purpose, to an amount, including existing indebtedness, in the aggregate exceeding five per centum on the value of the taxable property therein, to be ascertained by the last assessment for State and county taxes, previous to the incurring of such indebtedness. Ill. Const., Art. 9, § 12.

Townships do not hold their powers ordinarily under any grant from the government to the individual corporation; or by virtue of any contract with the government, or upon any condition, express or implied. They give no assent in their corporate capacity to the laws which impose their public duties or fix their territorial limits. 26 N. H., 284, 290. And they derive none of their powers from, nor are any duties imposed upon them by, the common law. They have been denominated quasi corporations, and their whole capacities, powers and duties are derived from legislative enactments. 14 Maine R. 375.

Where a cause of action exists in behalf of a township, and no officer is by statute authorized to prosecute for such cause of action, it is proper for the electors when convened in township meeting to direct such action to be brought, for which purpose they may appoint an agent to institute and prosecute the same, but such suit must be brought in the name of the township. 1 Den, R., 510.

The constitution of Illinois declares that no township shall ever become subscriber to the capital stock of any railroad or private corporation, or make donation to or loan its credit in aid of such corporation. Const., Art. on Mun. Sub. to R. R. or Priv. Corp. Since which, towns have no authority to subscribe for or donate to the capital stock of railroad companies. *The People ex rel., etc., v. Brooks*, 56 Ill. R., 142.

As to origin and power of towns in Massachusetts, see note to case of *Commonwealth v. Roxbury*, 9 Gray (Mass.) R., 510, 511.

A municipal corporation must show authority in terms or by necessary implication for all the powers it attempts to exercise, and especially so when it claims the right, by taxing or otherwise, to divest individuals of their property without their consent. Where a new power is given and the means of executing it provided, those claiming the power can exercise it in no other manner. *Mix v. Rose et al.*, 56 Ill. R., 121.

It is the design of the law that municipal corporations shall exercise complete control over their local affairs. The legislature ordinarily has no power to impose a debt or levy a tax upon a municipal corporation without its assent, or to authorize persons not corporate officers to create a debt against the corporation, or to levy a tax therein, either directly or indirectly, without the consent of those to be affected thereby, or of the municipal authorities. *Wilder et al., v. City of East St. Louis*, 55, Ill. R., 133.

1. To sue and be sued.¹
2. To acquire by purchase, gift or devise, and to hold property, both real and personal, for the use of its inhabitants, and again to sell and convey the same.²

(1) A township was sued on the following instrument: "The commissioners of highways of the township of R. will pay the bearer twenty dollars when funds in road district number three and four," dated and signed by the commissioners. Held, that the action could not be sustained. The order was too indefinite in its terms. It should show expressly the person to whom payable, and on what account. *Monroe v. Township of Rowland*, 11 Mich. R., 348; *People v. Town Board of Zelwaukie*, 10 Mich. R., 274.

A township is not liable for interest on damages appraised for laying out a highway. *People v. Township Board of La Grange*, 2 Mich. R., 187.

A town, in its corporate capacity, cannot maintain an action to vindicate the tax payers from an illegal tax. *Guilford v. Supervisors Chenango Co.*, 3 Kern. R., 143.

A town, organized under township organization in Illinois, is liable equally with natural persons in trespass, for wrongfully taking the goods of another than the execution defendant. *Wolf v. Boetcher*, 64 Ill. R., 316.

Towns, under the township organization act, are not liable to a private action for damages occasioned by the neglect of the town authorities to keep their public highways in repair. The case of *The Town of South Ottawa v. Foster*, 20 Ill. R., 296, so far as it holds the latter description of towns liable to such private actions, is overruled. In respect to that character of liability there is no difference between the authorities of counties and their powers and duties in regard to public highways, and towns established by law as civil divisions of counties merely, and the doctrine of the case of *Hedges v. The County of Madison*, 1 Gilm. R., 567, declaring that counties are not liable to such private actions, applies to towns of that description. The rule is otherwise in case of municipal corporations created for their own benefit, where more extensive powers and privileges are granted, as cities and villages. *Town of Waltham v. Kemper*, 55 Ill. R., 346; *Bushnell v. Town of Steuben*, 57 Ill. R., 35. Nor can towns be subjected to such liability through an action against the commissioners of highways. *Commissioners of Highways v. Martin*, 4 Mich. R., 557.

In a later case the Supreme Court say that the maxim that no one has the right to use his property so as to injure another, applies as well to townships as to incorporated cities and natural persons. *Tearney et al. v. Smith*, 86 Ill. R., 391.

(2) Towns may lawfully take by purchase or devise, and hold real estate, other than such as may be necessary to erect school houses and other public buildings upon. *Worcester v. Eaton*, 13 Mass. R., 371. They may take the fee of lands, for the purpose of public commons and this by purchase. *Beach v. Haynes*, 12 Vt. R., 15.

A town may gain title to lands by possession as well as an individual. *Booth v. Coventry*, 4 Vt. R., 297.

A town has no power to hold land not situated within its own limits. *N. Hempstead v. Hempstead*, *Hopk. Ch. R.*, 288, 2 *Wend. R.*, 109; *Riley v. City of Rochester*, 9 N. Y. (5 Seld.) R., 64.

Where a town owns a lot of land, and by vote assents to a proposed exchange of it, the title to the land does not pass by the mere act of such vote. *Atherton v. Johnson*, 2 N. Hamp. R., 31.

A town has no title to lands over which a highway passes; it remains in the respective owner, subject to the right of way by the public. Such right of passage does not belong to, nor is it in any sense the property of any particular town or county, but that of the whole State. *Town of Galena v. Clyde, etc., Plank Road Co.*, 27 Barb. R., 543.

A sufficient and convenient room for elections and town meeting purposes is a public use for which the town may purchase and hold a site, and erect a building, if there is none thereon, making all necessary contracts therefor. Such power includes the lesser power to lease a building for those purposes. *Town of Beaver Dam v. Frings*, 17 Wis. R., 398.

A town may erect a town house of sufficient capacity for all the business which it may have occasion to do in such a building, and may, in its erection, make suitable provision for its prospective wants; and if the building contains rooms not wanted for the time being for municipal business, the town may let them temporarily or allow them to be used gratuitously. And the condition of a deed of land to the inhabitants of a town, which provides that the same "shall not be used for any other purpose than as a place for a town house for said inhabitants," is not broken by the erection thereof of a town house, with a hall in the second story which has been used for miscellaneous purposes, and rooms upon the sides of the entrance which have been let and used for shops and other purposes not connected with municipal business, and the construction and use for several years of a lock-up under the building. *French v. Quincy*, 3 Allen (Mass.) R., 9.

3. To make all such contracts as may be necessary in the exercise of the powers of the town.¹ [Laws 1861, p. 218, § 1, 2.

(1) Where a contract is made in pursuance of a vote of a town, but before the contract is performed the vote is rescinded, it seems that the person with whom the contract is made is not affected by the rescission, unless he had notice thereof, in which case it would be otherwise. *Allen v. Taunton*, 19 Pick. R., 485. So a vote of a town authorizing payment for certain work done, if not acted upon by the party in whose favor the vote is taken, may be rescinded at the same or a subsequent meeting. *Getchell v. Wells*, 55 Maine R., 433; *Rumford v. Wood*, 13 Mass. R., 193, 199.

Towns are not bound, even by the express vote of the electors thereof, to the performance of contracts or other legal duties, not coming within the scope of the objects and purposes for which they exist. *Parsons v. Goshen*, 11 Pick. (Mass. R.), 396; *Stetson v. Kempton*, 13 Mass. R., 272; *Norton v. Mansfield*, 16 Mass. R., 48; *Anthony v. Adams*, 1 Metc. (Mass. R.), 284.

A town, as such, has no authority to contract with a plank road company, or other corporation, granting them the use of a highway in the town; as a corporation a town has nothing to do with, and no interest in the highways within its limits; the title to the soil is in individuals; the right to their use belongs to the inhabitants of the town, not exclusively, but in common with the whole public. The care and superintendence of highways has been committed to certain officers of the town chosen for that purpose, and whose duties are prescribed by law. See *Town of Fishkill v. Fishkill & Beekman Plank Road Co.*, 22 Barb. R., 634.

A town, in its corporate capacity, cannot maintain an action to set aside a contract entered into between the supervisor and commissioners of highways of the one part and a plank road company of the other, under which the company claims possession of a public highway in said town. *Town of Galen v. Clyde, etc., Plank Road Co.*, 27 (Barb. R.), 543.

A town may take a bond, voluntarily given, to save the town harmless from the support of certain persons therein named; nor need it appear from the bond that they were at the time a charge on the town. It is sufficient that the declaration shows necessary expenditure for their support before action brought. *Parolet v. Strong*, 2 Vt. R., 442.

In respect to the binding effect of contracts illegally made by the officers of municipal corporations, as organized townships, the rule is different from that in regard to private corporations organized for pecuniary gain. If such corporations, to increase their profits, embark in enterprises not authorized by their charter, still, as to third persons, and when necessary for the advancement of justice, the stockholders will be presumed to have assented, since it is in their power to restrain their officers when they transgress the limits of their chartered authority. But municipal corporations are not organized for gain, but for the purpose of government, and debts illegally contracted by their officers cannot be made binding upon the taxpayers from the presumed assent of the latter. *Bradley v. Ballard*, 55 Ill. R., 413.

Town officers are not deemed personally liable on contracts made in behalf of the town merely because they transcend their authority as such, if the other contracting party knows at the time that the contract is in excess of their authority. *Leet v. Shedd*, 42 Vt. R., 277.

A town committee having charge of the repair of roads were held not personally liable for inadvertently pointing out to a road contractor an erroneous location of his section. *Nickerson v. Dyer*, 105 Mass. R., 320.

Held, that where a town, through one of its selectmen, makes a contract and avails itself of the benefits thereof, it will not be allowed to repudiate any of its stipulations after the performance of the agreement by the other party by showing that the remainder of the selectmen were not cognizant of its terms. *Earl v. Wallingford*, 44 Vt. R., 367.

The enumerated powers of towns includes that of erecting a suitable building or town house, so called, for holding town meetings; for the convenience of town officers, and for transacting all town business. The erection of such a building, selection of a site, as well as purchase of the land therefor, is under the control and direction of the electors at town meeting. They may accomplish this by a vote of the electors, or by the appointment of a committee with power to act. A very proper course would be to entrust the matter to the board of town auditors. See *Town of Beaver Dam v. Frings*, 17 Wis. R., 398; *Kempton v. Stetson*, 13 Mass. R., 271.

The necessity of building a town hall and the amount of expense for that purpose is a question which is left to the judgment of the people of the town, and the officers whom they may elect. Courts will not interfere in this regard unless proper cause is shown. *Greeley et al. v. The People*, 60 Ill. R., 19.

Powers of towns to erect town halls and buildings for rental discussed—see *White v. Stanford*, 37 Conn. R., 578.

On the subject of building town house, see ante p. 56, note.

A town may receive by endorsement a negotiable note for the purpose of meeting an expected claim upon the town by the payee, and may maintain a suit thereon as indorsee, in the name of the town. This power may be exercised by the town agent or town authorities, without a vote of the town. *Augusta v. Leadbetter*, 16 Maine R., 45.

WHAT MAY BE DONE AT TOWN MEETING.

44. Powers of town meeting.] § 3. The electors present at the annual town meeting shall have power—(1)

1. To make all orders for the sale, conveyance, regulation or use of its corporate property that may be deemed conducive to the interests of its inhabitants.

2. To take all necessary measures and give directions for the exercise of their corporate powers.

3. To direct the raising of money by taxation for the following purposes:(2)

First—For constructing or repairing roads, bridges, or causeways within the town, to the extent allowed by law.³

Second—For the prosecution or defense of suits by or against the town, or in which it is interested.⁴

(1) The powers of electors to bind the town are conferred by statute, and are limited to such acts as are prescribed by law. *Cornell v. Guilford*, 1 Denio R., 510.

It is held in Massachusetts that a town may indemnify its officers against a liability which they may incur in the bona fide discharge of their duties, although it turns out that they have exceeded their legal rights and authority. *Bancroft v. Lynfield*, 18 Pick. R., 566.

A town meeting has no power to audit and allow accounts against the town. This authority is conferred upon the board of town auditors. See post Art. XIII. *People v. Onondaga*, 16 Mich. R., 254.

The electors at a town meeting cannot direct an officer of the town to perform any Act which by law he has not authority to perform, nor to act in any other manner, in the performance of his duty, than that which is pointed out by law. *Keen v. Stetson*, 5 Pick. R., 492.

An act of the legislature legalizing a vote of a town renders such vote valid, although not confirmed by the town. *Potter v. Canaan*, 37 Conn. R., 222; *Stuart v. Warren*, 37 Conn. R., 225.

A liberal and favorable construction should prevail to support the proceedings of towns, especially when no one is thereby injured or deprived of any right. *Kellar v. Savage*, 5 Shep. R., 444.

(2) It is not necessary that towns in their votes raising money for the annual expenditures authorized by law should in all cases state a specific sum for each particular object. A vote to raise a certain sum for the expenditures of the current year is a legal vote. *Tucker v. Aiken*, 7 N. Hamp. R., 113.

When bonds are issued, which are a town charge, to be paid by taxation, the electors at a town meeting, have the legal authority to vote taxes in advance, to meet their prompt payment, and how long in advance may be safely left to be determined by a vote of the electors of the town. *Wright v. The People ex rel.*, 87 Ill., R., 582.

Where a town has voted a tax, but nothing has been done under the vote, the town has the power, at a subsequent meeting legally held, to rescind, or reconsider, the vote; and having done so, the collector cannot legally proceed to collect the tax. *Stoddard v. Gilman*, 22 Vt. R., 568.

Where a town having authority to vote a tax for one year votes it for three or more years, the tax voted will be valid for one year. *People v. Allen*, 43 Ill. R., 461.

(3) Concerning tax for roads and bridges. See post, Div. title "Roads and Bridges."

(4) A town may vote a tax to defend a suit in which they are interested, whether directly for or against the town, or between third persons. *Briggs v. Whipple*, 6 Vt. R., 95.

Third—For any other purpose required by law.¹

Fourth—For the purpose of building or repairing bridges or causeways in any other town in the same county or in another county: *Provided*, That notice is given by posting notices describing the location of the bridge or causeway, and the probable amount required therefor, in at least three public places, at least ten days before the meeting in the town in which the taxes are proposed to be levied: *And provided, also*, that the tax, when collected, shall be paid only on the joint order of the commissioners of highways of the

(1) § 3 of Art. 4, Township law, which authorizes the electors in township meeting to raise money by taxation for certain specified purposes and "for any other purpose required by law," does not authorize the levy of a tax "for town purposes." It must appear that the purpose for which every tax was levied was a purpose authorized by law. 194 Ill. 51.

The power to levy taxes for all township purposes authorized by law, is, by § 3, Art. 4, township organization law, expressly given to the electors in the annual township meeting. No such power is conferred on the board of township auditors, and none can be implied. 172 Ill. 416.

The term "purposes required by law," must doubtless be understood as including also those cases where an obligation on the town is necessarily implied; but in exercising this power the electors will be held to legitimate purposes, where the township is immediately interested or directly benefited. 40 Ill. R., 389.

The proper authorities of townships shall annually on or before the second Tuesday in August, certify to the county clerk the several amounts which they severally require to be raised by taxation. Rev. law, § 122.

The authority of the county clerk is the certificate of the township clerk, without which any attempt to extend such tax is illegal and void. But back of such certificate there must be a levy of the tax by the proper authority [the electors in township meeting,] for only from such levy can the township clerk obtain the amount to be certified. 141 Ill. 483.

FORM OF CLERK'S CERTIFICATE OF TOWNSHIP TAX LEVY:

State of Illinois, }
County of _____ } ss.
_____ Township }

To the County clerk of said county, greeting:

I, A. B., clerk of said township, hereby certify, that in pursuance of authority given by section 3 of article 4, of the township organization law, the electors of said township, in Township Meeting assembled on the first Tuesday in April, A. D. 19—, elected to raise for the year A. D. 19—, by taxation on all the taxable property in said township, for the following purposes authorized by law, to-wit:

For.....	the sum of \$.....
For.....	the sum of \$.....
For.....	the sum of \$.....
For.....	the sum of \$.....
Total	\$.....

Making the aggregate sum of — dollars, (\$—) as appears in the record of the proceedings of said Township Meeting now in my office in said township.

Given under my hand at — in said township, this — day of — A. D. 19—.

(Signed.) A. B., Township Clerk.

See section 4, article XII, page 105; also, Revenue Act, ¶ 128, § 122.

town in which the bridge or causeway to be built or repaired is situated, and those of the town in which the tax is collected.(1)

4. To provide for the institution, defense or disposition of suits at law or in equity, in all controversies between the town and any other town, or any individual or corporation, in which the town is interested.(2)

(1) Where the law requires that notice shall be given of any special matter to be brought before a town meeting, in order to authorize action thereon, a vote taken upon such matter without notice being given is a nullity. *Brackett v. Whidden*, 3 N. Hamp. R., 17. But this rule does not apply to those current subjects which come before the annual town meeting as a matter of course pursuant to the general statutes.

Where notice of any special subject to be brought before a town meeting is required to be inserted in the notice of the meeting, the phraseology employed by the clerk will be liberally construed for the purposes intended. *Bull v. Warren*, 36 Conn. R., 83.

In giving notice for levy of a tax for bridge purposes in another town, no definite mode of proceeding being provided, it would seem proper to adopt the rule prescribed in other similar cases. A request may be made to the town clerk by any elector of the town to have the subject brought before the next annual town meeting; in which case the clerk may include the subject, as requested, in the notice of the town meeting, as in case of change of place of holding the town meeting. See Art. VI, § 5, post, p. 73. Or the notice for this purpose may be posted as a separate notice. The law does not prevent the town clerk from giving the notice even without a request; and when request is made, it may or may not be in writing.

The following may be the form of the words to be inserted in the notice of the annual town meeting in the foregoing case:

Notice is, also, hereby given that at said town meeting the following subject will be considered, to-wit: The raising of money by taxation, for the purpose of building [*or as the case may be*] a bridge in the town of ———, across a stream known as [*name of stream*], at the place where the highway crosses said stream, leading from ——— to ———. The probable amount required therefor is ——— dollars.

The act concerning roads and bridges provides that the treasurer of the commissioners of highways shall receive and have charge of all moneys raised in the town for the support and maintenance of roads and bridges. See Div. II, post, "Roads and Bridges," § 11. In view of this it would seem that the money collected for tax levied for bridge and causeway purposes in another town should be paid over to the treasurer of the commissioners of highways of the town wherein the tax is levied, as in other cases.

The joint order of the commissioners of highways may be in the following form:

Form of Joint Order of Commissioners of Highways.

——— County, }
Town of ———, } ss.

To the treasurer of the commissioners of highways of said town:

Pay to ———, or order, the sum of ——— dollars on account of funds in your hands from tax levied and collected for bridge and causeway purposes in the town of ———.

Dated this — day of ———, A. D. 19—.

A. B., } Com's of highways
C. D., } of
E. F., } town of ———.
G. H., } Com's of highways
I. J., } of
L. M., } town of ———.

(2) Prosecution and defense of suits. It is held in New Hampshire that towns have a qualified interest in the roadways and bridges they have erected, and may maintain an action on the case for the destruction or obstruction of the road, or the conversion of the material. *Town of Troy v. Cheshire R. R. Co.*, 3 Foster R., 83.

Held in Massachusetts that it is competent for the inhabitants of a town to take upon themselves the expense of a suit against their agent or servant in which the interests of the town are directly involved. Where the servants of the town have

5. To prevent the introduction, growing or dissemination of Canada thistles or noxious weeds, and to allow rewards for their destruction, and to raise money therefor.¹

6. To offer premiums and to take such action as shall induce the planting and cultivating of trees along the highways in such towns, and to protect and preserve trees standing along or on highways.

7. To make rules and regulations for ascertaining the sufficiency of all fences in such town, and to determine what shall be a lawful fence within the town, except as otherwise provided by law.²

8. To restrain, regulate or prohibit the running at large of cattle, horses, mules, asses, swine, sheep or goats, and to determine the time and manner in which such animals may go at large unless the same are restrained from running at large in some manner provided by law.³

made mistakes which have rendered them liable at law, that it is legal and proper for the town to meet the expense. *Babbitt et al. v. Savoy*, 3 Cush. R., 530.

No action lies against a town for an injury to persons or property occasioned by the suffering of a public highway to become out of repair, and in a ruinous and unsafe condition; and the electors at town meeting have no authority, and cannot, by a majority vote, bind the town by agreeing to pay to the owner his damages he has sustained by such injuries. The town could not be made liable for their neglect without some express statute to that effect. In most of the New England States such a statute exists. See *Morey v. Newfane*, 8 Barb. R., 645; also 17 Johns. R., 452; *Bushnell v. Town of Steuben*, 57 Ill. R., 35; *Bussell, Admr., v. Town of Steuben*, 57 Ill. R., 35; *Town of Waltham v. Kemper*, 55 Ill. R., 346.

(1) On the subject of Canada thistles, see, also, post, subject "Canada Thistles."

(2) Concerning fences, see, also, Div. IV., title "Fences," post.

(3) Concerning animals running at large, see also, Div. X., title "Animals running at large," post.

The rule of common law, which requires the owner of cattle, horses and other animals to keep them on his own land, was formerly not in force in Illinois. Seeley v. Peters, 5 Gilm. R., 130; *Misner v. Lighthall*, 13 Ill. R., 609. But by the law above referred to, the rule of the common law has been changed in this regard, and such animals are not allowed to run at large, except where permitted by a vote of the people, in pursuance of the law. It will be seen, by reference to the law above referred to, post, Animals ¶ 8, § 1, that where counties vote to allow domestic animals to run at large, the towns of the county may, nevertheless, by vote, restrain such animals from running at large in the town so voting.

A vote of a town to restrain cattle or other animals from going at large within the limits of the town is binding upon persons not inhabitants, whose animals are found going at large. *Gilmore v. Holt*, 4 Pick. R., 258; *Ames et al. v. Carlton*, 41 Ill. R., 262.

Any by-law of a town declaring that all hogs should be kept up, only extends to prevent hogs from going at large on the highway; and it seems that a town has no power to prevent the inhabitants from allowing their own hogs and other animals to go at large upon their own lands. *Shepard v. Hees*, 12 John. R., 433. But the owner of animals running at large would be liable to the damage they may do.

Towns may make by-laws or ordinances prohibiting cattle and other animals from running at large. The owner of animals running at large, contrary to such by-laws or ordinances, will be liable for trespass if his cattle go upon the land of others. A justice of the peace has jurisdiction in an action of trespass for damages in such cases. Thus, a suit was brought by A. against B. before a justice of the peace. The cause was taken to the Circuit Court by appeal and tried upon the

9. To establish and maintain pounds at such places within the town as may be deemed necessary and convenient, and discontinue any pounds therein. When any pound is erected, it shall be under the care and direction of a pound master.¹

10. To determine the number of pound masters, to prescribe their duties, and to elect pound masters, either by ballot or in such other manner as they may determine, or provide for their appointment.

11. To authorize the distraining, impounding and sale of cattle, horses, mules, asses, swine, sheep or goats for penalties incurred and costs of the proceeding: *Provided*, that the sale of animals distrained or impounded shall be conducted, as near as may be, according to the law regulating sales of property by constables under execution: *And provided, also*, the owner of such animals shall have the right to redeem the same from the pur-

following agreed state of facts: "The plaintiff is a resident of the town of Nevada, and the defendant is a resident of the town of Sunbury, lying adjoining in the same county. The defendant's cattle were running at large in the town of Sunbury; and, while so running at large, crossed the town line into the town of Nevada, and did damage to the plaintiff's crops to the amount of five dollars. The plaintiff's crop was protected by no fence further than required by the ordinance hereinafter set forth. The town of Nevada had adopted the following ordinance or by-laws:

The outside edge of cultivated lands shall be a good and lawful close or fence for all purposes in law.

No cattle, horses, mules, asses, hogs or sheep, shall be permitted to run at large in the town of Nevada, in the county of Livingston, and State of Illinois.

The court found for the plaintiff, and the cause was taken to the Supreme Court, and judgment affirmed. The court say, Lawrence, Justice:

The statute authorizes every town to prohibit the running at large of cattle, horses, etc. This town did so. Under the operation of this ordinance, cattle running at large were running in violation of law, and their entry upon the premises of a stranger was a trespass, as at common law. Justices have jurisdiction of the action of trespass to real estate, and would therefore have jurisdiction of an action brought to recover damages for injuries done by cattle illegally at large. The special remedy given by the ordinance is simply cumulative, and could not oust the justice of a general jurisdiction given him by the statute. The only question for him to decide was, whether the defendant's cattle had illegally gone on the land of the plaintiff. If a trespass, the owner was liable for any damages done, and these damages could be recovered before any tribunal having jurisdiction of the parties and of the action of trespass. Judgment affirmed. *Ames et al. v. Carlton*, 41, Ill. R., 262.

Where an act concerning animals running at large provided for taking up by a householder, and that the same should be delivered up to the owner on payment of fees and charges. Held, that a party seeking to justify such taking up must show that he is a householder (see *Elinger v. Boneau*, 51 Ill. R., 94), and that the owner, before he can maintain replevin, must show both a demand for the animals and offer to pay the fees allowed for taking up, and charges for keeping the same, as prescribed by the act. *Holcomb v. Davis*, 56 Ill. R., 413.

(1) Location of pounds. It seems to be the policy of the law that pounds shall have a fixed and known locality. This is necessary, that all parties interested may take notice of where to apply in case of animals impounded. If no public pound has been erected by the town, it would be proper to designate any particular enclosure named, as a pound for the time being. In case neither course is adopted, it would no doubt be proper for the town by its by-laws to authorize a person to impound animals in his private enclosure, by giving immediate personal notice to the owner. *Anthony v. Anthony*, 6 Allen (Mass.) R., 418.

Trespass will lie where a pound master allows impounded cattle to be driven away for pasture, or where there is unreasonable delay in complying with the law or regulations of the town. *Cate v. Cate*, 44 N. Hamp. R., 211; *Harriman v. Fifield*, 36 Vt. R. 341.

chaser thereof at any time within three months from the date of the sale, by paying the amount of the purchaser's bid, with reasonable costs for their keeping, and interest upon the amount bid, at the rate of ten per cent per annum.¹

(1) A person distraining cattle running at large, contrary to the regulations of the town, must drive them to the pound in a reasonable time, considering the circumstances. As to what is a reasonable time is a fact to be determined in the trial. Mere delay in instituting proceedings in the case, does not make him a wrong doer from the beginning. *Drew v. Spaulding*, 45 N. Hamp. R., 472.

A person at his father's on a visit, impounded cattle found upon his father's farm, with the approbation of his father, who sent a boy to help him: held, that the son's act in impounding the cattle was, in legal effect, the act of his father.

An impounder of cattle has a right to use the same force to maintain his possession of them that a sheriff has to protect his possession of property taken by him on legal process. A person who takes possession of cattle for the purpose of impounding them, does not, by afterwards abandoning his design, become a trespasser ab initio, as to become liable for force, which he used in defense of such possession before giving it up. *Barrows v. Fassett*, 36 Vt. R., 625.

Trover lies for an animal wrongly impounded; and under the general issue the defendant may show that the animal was unlawfully at large. *Drew v. Spaulding*, 45 N. Hamp. R., 472.

When a statute provided for the impounding of animals found "wandering, straying or lying" about the road; it was held that horses grazing on the side of a turnpike, under the control of a man in charge of them, were not liable to be impounded under this provision. *Morris v. Jeffries*, Law Rep., 12 B., 291.

Where an ordinance of a town prohibiting certain animals from running at large provided that any person, being the owner of or having the care of any such animal, who should suffer the same to run at large, should be subject to a penalty specified; in an action to recover the penalty for an alleged violation of the ordinance, the proof disclosed these facts; that the defendant lived on his farm outside of the limits of the town; that he had allowed the animals to run in a piece of woods near by, but that he watched and cared for them daily, and would have prevented them from straying into the town, on this the first instance, had he not been called away to the bedside of a dying brother. Held, that this evidence clearly exonerated the defendant from the charge of suffering his animals to run at large within the limits of the town; that to subject a person to the penalty under this ordinance, he must himself have participated in the act by suffering it to be done, which requires that he should have knowingly permitted his animals to run at large within the town, or have been guilty of such negligent conduct in enabling them to do so as would have been equivalent thereto. *Town of Collinsville v. Scanland*, 58 Ill. R., 221.

An ordinance of a town for distraining stock from running at large, provided, among other things, that if the owner failed to reclaim them within a certain time, "and pay all costs of impounding and the damages which the stock may have done—the damages to be assessed by three disinterested men, citizens of the town," they should be sold to satisfy such costs and damages. Held, that the ordinance was unconstitutional and void; that the proceeding being one for damages, the owner was entitled to a trial by jury, the same as in any other case at law, and could not be deprived of such right. *Bullock v. Geomble*, 45 Ill. R., 218; *Willis v. Segris*, Id., 289.

The law which gives to towns the power to restrain or prohibit the running at large of certain animals, and authorizes the distraining, impounding and sale of the same for penalties incurred, and the costs of the proceedings, does not give to towns the power to confer upon any of its officers authority to make sales for impounding animals, except upon the contingency that penalties have been incurred. A proceeding to ascertain whether a penalty has been incurred, is one purely judicial in its character, and involves a power which cannot be exercised by the pound master by virtue of his office; nor can a town by its by-laws authorize him to sell property to satisfy a forfeiture for the violation of a law or ordinance, without a judicial ascertainment that there has been such violation. And a sale of property by the pound master, without a judicial ascertainment being first had, will not divest the owner of his title. *Poppen v. Holmes*, 44 Ill. R., 360; *Willis v. Segris*, 45 Ill. R., 293; *Cate v. Cate*, 44 N. Hamp. R., 211.

In the case of *Poppen v. Holmes*, 44 Ill. R., 360, the court say, Lawrence, J.:

It will be observed that the power to make sales is given only for penalties incurred and the costs of the proceedings, and a town cannot by its by-laws confer such authority upon its officers in any other contingency. But to ascertain whether a penalty has been incurred or not, is a proceeding purely judicial in its character, and that power cannot be exercised by the pound master by virtue of his office. The by-law may impose a reasonable penalty for the offense of allowing animals to run at large, may authorize the animals to be impounded, and may direct an in-

12. To construct and keep in repair public wells or other watering places, and regulate the use thereof.

13. To prevent the deposit of night soil or other offensive substances within the limits of the town.

quiry to be had before a magistrate as to whether the penalty has been incurred, with a right of trial by jury. If it has been incurred, the magistrate may be directed to enter judgment against the owner for the penalty and costs, and an order directing the pound master to sell the property. If the owner is known, he should receive personal notice, and if not known, there may be constructive notice to him, as the unknown owner of the impounded property, by posting, the property being described in the notices. A by-law thus framed would be free from objection; but one which authorizes the pound master to sell property without judicial ascertainment that some law has been violated, would confer upon the pound master a species of power never contemplated by the statute above quoted, to say nothing of constitutional objections to its exercise. See, also, *Willis v. Segris*, 45 Ill. R., 289.

In the absence of any express provision of law prescribing the mode of proceeding to establish the fact that a penalty has been incurred, the court, in the foregoing case, held that such mode of proceeding may be provided by the town by-laws, and the court points out particularly the provisions that may be made. The following form of by-laws, and mode of proceeding concerning domestic animals running at large, are given as being in accordance with the suggestions of the court in the foregoing case:

Form of By-Laws Concerning Cattle and Other Animals Running at Large.

The town of ———, in the county of ———, in the State of Illinois, by the electors thereof, duly assembled, do adopt the following by-laws:

§ 1. No cattle, horses, mules, asses, swine, sheep or goats, shall hereafter be permitted to run at large in the town of ———, and it shall be unlawful for any animals of the species aforesaid to run at large in said town.

§ 2. Any person owning any animals of the species aforesaid, who shall suffer or allow the same to run at large in said town, shall incur and be liable to a penalty of ——— dollars for each and every day he shall suffer or allow any of his said animals to so run at large.

§ 3. Whenever any animals named in the first section hereof are hereafter found running at large, it shall be the duty of the pound master to cause them to be taken and placed in the public pound. And it shall be lawful for any person to take such animals to the pound, and cause them to be impounded.

§ 4. Whenever any such animals are placed in the pound, it shall be the duty of the pound master to make complaint at once to some justice of the peace of the town, and apply for proceedings to adjudge against the owner the penalty incurred, stating the name of the owner, if known to him, and the number and kind of animals. If the owner is not known, then giving a description of the animals.

§ 5. The justice shall thereupon issue a notice in writing to the owner of said animals stating the facts of impounding, and fixing therein a time not exceeding ——— days thereafter, when said complaint will be heard, which notice shall be served at least ——— days before the time of hearing the complaint. In case the owner is not known, then the notice shall describe the animals, and be posted by the pound master in five public places of the town, for ——— days before the time fixed for such hearing.

§ 6. It shall be the duty of the pound master to attend before the justice at the time fixed for the hearing as aforesaid, and present the facts in the case. The cause shall be tried by a jury, unless waived by the owner, and shall be conducted as other causes of like nature are conducted before justices of the peace. If the owner is found guilty, the justice shall

14. To make all such by-laws, rules and regulations as may be deemed necessary to carry into effect the powers herein granted, and to impose such fines as shall be deemed proper, ex-

enter judgment against him for the penalty as herein prescribed, and costs, and shall enter an order directing the pound master to sell the property to make the fine and costs.

§ 7. Whenever animals are impounded, it shall be the duty of the pound master to supply them with proper food and drink during the time they remain. The value thereof, with services for feeding, to be shown on trial, shall be allowed as costs against the owner.

Under the foregoing form of by-laws the act of allowing any number of animals to run at large for one day constitutes one offense. Each day will be a separate offense; for which separate action should be brought in prosecuting for penalties.

The complaint to the justice, under the foregoing form of by-laws, need not be in writing. Such proceeding is not required to be in writing, unless when so expressly provided.

Form of Notice by Justice to Owner of Animals Impounded.

To A. B.:

You are hereby notified that C. D., the pound master of the town of ———, has this day complained to me that on this ——— day of ———, A. D. 19—, *three* cows, of which you are the owner, were found by him running at large in said town, at [*state the place where*], contrary to the by-laws of the town, as he alleges, whereby you have incurred the penalty prescribed. That he did thereupon cause said cows to be impounded in the public pound of the town [*if there are more than one pound, state which the animals are in*], where they now remain, and that said complaint will be heard before me at my office, in said town, on the ——— day of ———, A. D. 19—, at — o'clock — M.

Witness my hand, this ——— day of ———, A. D. 19—.

E. F.,
Justice of the Peace.

The notice may be served by the pound master or any constable; but in case the defendant does not appear, proof of the service should be made before the justice by the person serving the notice, as in case of any other fact.

Form of Notice by Justice, Where Owner of Impounded Animals Is Not Known.

To whom it may concern:

The unknown owners of the animals, hereinafter described, are hereby notified that C. D., the pound master of the town of ———, has this day complained to me that on ——— day of ———, A. D. 19—, *three* cows, *one a brindle, and two of a deep red color, each about six years old*, of which the owner is unknown, were found by him running at large in said town, as [*state the place where*], contrary to the by-laws of the town, as he alleges, whereby the owner has incurred the penalty prescribed. That he did thereupon cause said animals to be impounded in the public pound of said town [*if there are several pounds, state which the animals are in*], where they now remain, and that said complaint will be heard before me at my office, in said town, on the ——— day of ———, A. D. 19—, at — o'clock, — M.

Witness my hand this ——— day of ———, A. D. 19—.

E. F.,
Justice of the Peace.

cept when a fine or penalty is already allowed by law: *Provided*, no fine or penalty shall exceed \$50 for one offense.

15. To apply all penalties, when collected, in such manner as may be deemed most to the interests of the town. [Laws 1861, p. 221, § 5; p. 222, § 6; Laws 1867, p. 173, § 3.

Besides the foregoing powers, the electors may, in a general or a special town meeting, direct the disbursement or distribution of any surplus of any bond fund returned by the county on the cancellation of township bonds, as provided by the Act of March 29, 1889. [See this Act in Appendix.] The particular object for which such money may be expended must be determined by the electors of the township. [See ¶ 150, ¶ 151, ¶ 152, p. 115, post.

Form of Docket Entry, on Hearing Complaint Against Owner of Impounded Animals.

State of Illinois,	}	Before E. F., Justice of the Peace.
County of ———.		
The Town of ———,	}	Complaint of C. D., pound master.
vs.		
A. B.		

A. D. 19—, July 2, C. D., pound master, complains of A. B. for allowing *three certain cows*, of which said A. B. is the owner, to run at large, contrary to the by-laws of said town of ———, which animals he did this day cause to be impounded. Notice is issued to said A. B. that said complaint will be heard July 5, A. D. 19—, at — o'clock, — M. Notice returned served on said A. B. at date, by pound master.

July 5, — o'clock, — E., pound master appears, and makes proof of due service of notice on defendant; said A. B. also appears; jury of twelve men summoned, and sworn to try the matter in issue. The allegations of the parties, and proofs, are heard. The jury find that the complaint herein is true, and assess a fine against said A. B. of ——— dollars. Judgment is therefore rendered against said A. B. for said sum of ——— dollars for said fine, and the costs herein taxed, at ——— dollars and ——— cents. And it is ordered that the pound master proceed and sell said animals impounded as aforesaid, to make the amount of said fine and costs, in accordance with the statute in such cases made and provided, unless the same shall be paid before the sale.

E. F.,
Justice of the Peace.

Pound master's sale. The law regulating sales of property by constables under execution, provides that the constable "shall appoint a day and hour for the sale of said property, giving ten days' previous notice of such sale, by advertisement in writing to be posted up at three of the most public places in the county; and on the day so appointed, the said constable shall sell the property so levied on, or so much thereof as may be necessary to pay the debt, interest and costs, to the highest bidder." The property should be sold by the pound master, in the town, at some convenient public place to be set forth in the notice of sale. The following may be the form of the notice of sale:

Form of Pound Master's Notice of Sale.

POUND MASTER'S SALE.

Notice is hereby given that the undersigned, pound master for the town of ———, in the county of ———, and State of Illinois, by virtue of authority in him vested, will on the ——— day of ———, A. D. 19—, at the hour of — o'clock — M., at [state place], in said town, offer for sale and sell to the highest bidder the following described animals, to-wit; [*describe the animals particularly*], said animals having been duly distrained and im-

45. Exception as to cities and villages.] § 4. In towns in which there are incorporated cities or villages, the boundaries of which are co-extensive with the limits of the town, or the town lies wholly within the limits of an incorporated city or village, the electors shall not exercise the several powers contained in subdivisions of section 3 of this article, namely: 3, 5, 6, 7, 8, 9, 10, 11, 12 and 13; but all moneys necessary to be raised in such towns for town expenses shall be ascertained by the county board, and the county clerk shall extend the amount so ascertained upon the

pounded for a fine of ——— dollars, incurred in consequence of the same running at large in said town, contrary to the by-laws thereof. Said animals will be sold as aforesaid, in satisfaction of said fine and costs of proceedings.

Dated this ——— day of ———, A. D. 19—.

J. S.
Pound Master.

The pound master, in taking up animals and proceeding to sell them, must pursue the law and regulations of the town strictly, or the proceedings will be invalid, and the purchaser, at his sale, will acquire no title to the property. *Rex v. Crook*, 1 Cowper R., 26; *Clark v. Lewis*, 35 Ill. R., 420.

Under an ordinance of a town prohibiting the running at large of certain animals, except at certain seasons of the year, and authorizing the impounding of the same, and their sale after giving notice, the pound master has no authority to act unless the animals are running at large, and at a time prohibited by the ordinance, and he will become a trespasser if he acts without authority. If he is sued for the property, he must prove that the animals were in that situation which the ordinance designated. The mere fact that he is an officer of the law is not sufficient; he must show that he acted lawfully. Nor can the purchaser, at a pound master's sale, establish his title against the former owner by mere proof of the sale; he must establish its validity by showing the authority, which cannot be presumed. *Clark v. Lewis*, 35 Ill. R., 418.

Where the ordinance requires that not less than ten days' notice shall be given before a sale of an impounded animal shall be made; this is an essential prerequisite of such a sale, and can not be dispensed with by the officer. An abridgment of the time for the shortest period must avoid the sale. Nor can the sale be sustained where the pound master sells two animals belonging to different owners together at the same bidding. They should be sold separately. *Clark v. Lewis*, 35 Ill. R., 418.

A by-law is a rule obligatory on a body of persons, or over a particular district, not being at variance with the general laws of the State, and being reasonable and adapted to the purposes of the corporation; and any rule or ordinance of permanent character which a corporation is empowered to make, either by the common or statute law, is a by-law. It is a rule made prospectively and to be applied whenever the circumstances arise for which it is intended to provide. A by-law cannot impose an oath, unless empowered to do so, for that is contrary to the common law. By-laws are binding upon all the inhabitants of the town; and every stranger, though merely coming within the limits of the town, is bound, at his peril, to take notice of all its by-laws, provided it is said the object of the by-laws be to suppress a general inconvenience or defeat fraud. *Grant on Corporation*, 76, 77.

In an action to recover a penalty for violating a by-law or ordinance of a town, it must appear affirmatively that the act complained of occurred after the by-law or ordinance took effect. It would be error to render judgment, for the penalty without such proof. Debt is the proper form of action in such case. In bringing such action before a justice of the peace, which may be done where the amount does not exceed one hundred dollars, an affidavit or complaint in writing on which to base it is unnecessary. The action can be commenced in the same manner as an ordinary action of debt before a justice of the peace. The summons may be in the usual form of civil cases. A bond for costs, as in penal actions under the statute, is not necessary. *Town of Jacksonville v. Black et al.*, 36 Ill. R., 507; *Town of Lewiston v. Proctor*, 23 Ill. R., 533.

Ordinances of a municipal corporation are binding upon all the inhabitants therein, and have all the force and effect of laws. *Jones v. Fireman's Ins. Co.*, 2 Daly (N. Y.) R., 307.

collectors' books of such towns, and, when collected, the same shall be paid over to the town supervisors the same as in other towns, and the powers and provisions of all cities and villages under their organic law shall not be repealed by any of the provisions of this article.

NOTICE OF BY-LAWS, ETC., TAKING EFFECT.

46. § 5. It shall be the duty of the town clerk to cause all by-laws, rules and regulations of the town, within twenty days after their adoption, to be published, by posting in three public places in the town; also by causing the same to be inserted once in a newspaper published in the town, if any there shall be; but all such by-laws, rules and regulations shall take effect and be in force from the date of being adopted, unless otherwise directed by the electors of the town. [Laws 1861, p. 222, § 7.]

EFFECT OF CERTAIN CONVEYANCES.

47. § 6. Every conveyance or lease of land made to any person or persons in any manner, for the use and benefit of a town or its inhabitants, shall have the same effect as if made to the town by its corporate name. [Laws 1861, p. 218, § 3.]

HOW CONVEYANCES MADE.

48. § 7. When any conveyance of real estate is made by a town, the deed shall recite the order of town meeting directing the same (which recital shall be *prima facie* evidence of the making and contents of such order), and the deed shall be signed by the supervisor, in his official capacity, and attested by the clerk of the

An ordinance which appears by the records to have been passed, may be presumed to have been passed by the full number of votes required, although the record does not affirmatively show that fact. *Lexington v. Headly*, 5 Bush. (Ky.) R., 508.

In a proceeding to recover a penalty for violating an ordinance of a municipal corporation proof is necessary of the existence of the ordinance. *Stevens v. Chicago*, 48 Ill. R., 498. To warrant a conviction for violation of an ordinance there must be proof that the act was committed within the limits of the town. See *Taylor v. Americus*, 39 Ga. R., 59.

A penalty incurred under the by-law of a town made to prohibit horses from going at large, etc., may be enforced after the expiration of the period it was intended to regulate. *Stevens v. Dimond*, 6 N. Hamp. R., 330.

A person upon whom a fine is imposed for violation of a town ordinance cannot be committed to prison or held by the officer, upon the mere verbal order of the magistrate. *President and Trustees of Odell v. Schroeder et ux.*, 58 Ill. R., 353.

It is erroneous to issue execution on a judgment against a municipal corporation. *Id.*

§ 82 of the school law of 1873, did not repeal so much of the township organization law as authorized towns organized thereunder to appropriate to their own use penalties recovered in suits prosecuted by such towns for violation of their town by-laws, and that the fines and penalties which it was designed to appropriate to the school fund, were such as would otherwise accrue to the people of the State for the violation of a public statute. *Opinion Att'y Gen. Edsall*, March 23, 1873.

town, unless the meeting shall have ordered that the same be made by some other officers or persons.¹

ARTICLE V.

LEGAL PROCEEDINGS IN FAVOR OF AND AGAINST A TOWN.

- 49. How conducted—Service.
- 50. In what name suits brought.
- 51. Who competent as witnesses and jurors.
- 52. Jurisdiction of justices.
- 53. Petition of town lands.
- 54. Costs—Judgments against towns.

49. How conducted—Service.] § 1. Whenever any controversy or cause of action shall exist between any towns of this State, or between any town and an individual or corporation, such proceedings may be had either at law or equity for the purpose of trying and finally settling such controversy, and may be conducted in the same manner, and the judgment or decree there-

(1) *Form of Deed of Conveyance by Town.*

This indenture, made this —— day of ——, A. D. 19—, between the town of ——, in the county of ——, and State of Illinois, party of the first part, and C. D., of ——, party of the second part, *witnesseth*:

That, whereas, at the annual town meeting of said town of ——, duly held on the —— day of ——, A. D. 19—, at ——, in said town, an order was made by said town meeting in the words following, to-wit:

Ordered that [set forth the words of the order. The deed should also recite a compliance with the conditions of the order.]

Now, therefore, the said party of the first part, in consideration of said sum of —— dollars duly paid, the receipt whereof is hereby acknowledged, has remised, released, sold, conveyed and confirmed, and by these presents does remise, release, sell, convey and confirm unto the said party of the second part, —— heirs and assigns forever, all the right, title, interest, claim and demand which the said party of the first part has in and to the following described lot, piece or parcel of land, situated in the county of ——, and State of Illinois; [*describe the premises*] to have and to hold the same, together with all and singular the appurtenances and privileges thereunto belonging, or in anywise thereunto appertaining, and all the estate, right, title, interest and claim whatever, of the said party of the first part, either in law or equity, to the only proper use, benefit and behoof of the said party of the second part, —— heirs and assigns forever.

In witness whereof, A. B., supervisor of said town of ——, has hereunto set his hand in behalf of said town, and affixed a scroll hereto in the place of a seal, and this indenture is attested by the town clerk, the day and year first above written.

Attest: E. F.,
Town Clerk.

A. B., [SEAL.]
Supervisor of the town of ——.

Such deed should be acknowledged as other deeds of conveyance.

in shall have the like effect as in other suits or proceedings of a similar kind between individuals and corporations. All process shall be served by leaving a copy of the writ or summons with the supervisor.¹ [Laws 1861, p. 234, § 1, 4.]

50. In what name suits brought.] § 2. In all such suits or proceedings, the town shall sue and be sued by its name, except where town officers shall be authorized by law to sue in their name of office for the benefit of the town.² [Laws 1861, p. 234, § 2.]

51. Who competent as witnesses and jurors.] § 3. On the trial of every action in which the town is a party or interested, the electors and inhabitants of such town shall be competent witnesses and jurors, except that in suits and proceedings by one town against another, no inhabitant of either town shall be a juror. [Laws 1861, p. 234, § 5; p. 230, § 2.]

52. Jurisdiction of justices.] § 4. Any action in favor of a town, which, if brought by an individual, could be prosecuted be-

(1) Towns furnishing reasonable supplies to paupers belonging to other towns, may generally recover what they have bona fide paid. *Southbridge v. Charlton*, 15 Mass. R., 248.

An individual inhabitant of a town, being of course a party to a suit brought against the town, has the right to appear and defend such suit. *Union v. Crawford*, 19 Conn. R., 331.

The supervisor would seem to have authority to employ an attorney to conduct the defense of suits brought against the town, for whose services the town would be liable. Such was the construction of the law of 1861. *Cooper et al. v. Delavan*, 61 Ill. R., 96.

(2) Town officers, in bringing suits, should do so in their name of office without the addition of their individual names. Should town officers, such as commissioners of highways, sue in their individual names as such town officers, and their term of office expires pending the proceeding, the suit would abate, as these persons would no longer act in an official character, and hence could not further maintain the suit in that capacity. And it may be a serious question whether the suit could be revived in the names of their successors; and if it could, then the same difficulty would present itself in case their predecessors had acted willfully or maliciously, in rendering judgment, so as to hold them liable, as the successors could not be made personally responsible for the malice or neglect of their predecessors. A judgment against a person not then holding a town office would not bind the town. If against the successor of him who committed the wrong he could urge that he did not omit the duty. *Highway Comrs. of Rutland v. Highway Comrs. of Dayton*, 60 Ill. R., 58.

The town supervisor may defend a suit against a town, and prosecute an appeal, without a special authority from the town. *Haner v. Polk*, 6 Wis. R., 350. Town of *Partridge v. Snyder*, 78 Ill. R., 519.

A town may bring an action in its own name, on a contract made for its benefit with an authorized agent. *Garland v. Reynolds*, 20 Maine R., 45.

An agent of the town, to prosecute and defend suits only, has no authority to settle them; and for any promise made by him in compromise he is personally liable if the party act on the faith thereof. *Clay v. Wright*, 44 Vt. R., 538.

The admissibility of the confessions of an agent to charge his principal, applies to the officers and agents of a town. *Burlington v. Calais*, 1 Vt. R., 471.

If a suit is brought in the corporate name of the township, it is not necessary to allege in the declaration that the township has been incorporated. *Morris v. Trustees of Schools*, 15 Ill. R., 266.

fore a justice of the peace, may be prosecuted by the town in like manner before any such justice.¹ [Laws 1861, p. 234, § 6.]

53. Partition of town lands.] § 5. Whenever by any decree or decision in any suit or proceeding brought to settle any controversy in relation to town commons, or other lands, the common property of a town, or for the partition thereof, the right of any town shall be settled and confirmed, the court in which such proceedings shall be had may partition such lands according to the rights of the parties. [Laws 1861, p. 235, § 8.]

54. Costs—Judgment against town.] § 6. In all suits or proceedings prosecuted by or against town officers, in their name of office, costs shall be recovered as in like cases between individuals. Judgments recovered against a town or against town officers, in actions prosecuted by or against them, in their name of office, shall be a town charge, and when collected, shall be paid to the person or persons to whom the same shall have been adjudged.² [Laws 1861, p. 235, § 9.]

ARTICLE VI.

TOWN MEETING—JUDGES OF ELECTION.

- 55. Time of holding meeting.
- 56. Notice.
- 57. Election precinct.
- 58. Place of meeting.
- 59. Change of place of meeting.
- 60. Ex-officio judges of election.

SPECIAL TOWN MEETING.

- 61. When called.
- 62. Notice.
- 63. Form of notice—Restriction.
- 64. Powers of special meeting.
 - (1) Filling vacancies.
 - (2) Raising money for highways, etc.
 - (3) Unfinished business.

55. Time of holding meeting.] § 1. The annual town meeting, in the respective towns, for the election of town officers,

(1) A town may appeal from the judgment of a justice of the peace. The appeal bond should be executed by the supervisor of the town. *Gardiner v. Town of Chambersburg*, 12 Ill. R., 99. *Town of Partridge v. Snyder*, 78 Ill. R., 519.

The bond in case of appeal by a town should be in the form prescribed by the statute. See Haines' Treatise, Title, "Appeal and Certiorari," commencing thus, "Know all men by these presents, that we the town of (name of town) and (name of security);" concluding thus. "Witness the hand and seal of A. B., supervisor of said town of—, this — day of—, A. D. 19—." The supervisor should sign his name to the bond, adding his title of office—supervisor—and affix his seal as in case of an individual.

(2) When a town agent employs an attorney in a suit in favor of or against the town, the town is legally holden to pay the attorney's services, without an

and the transaction of the business of the town, shall be held on the first Tuesday of April in each year, at the place appointed for such meetings.¹ [Laws 1861, p. 220, § 1.]

56. Notice.] § 2. Notice of the time and place of holding town meetings shall be given by the town clerk, or, in his absence, the supervisor, assessor or collector, by posting written or printed notices in three of the most public places in the town, at least ten days prior to the meeting, and if there is a newspaper published in the town, by at least one publication therein, prior to the meeting.² [Laws 1861, p. 220, § 1.]

57. Election precinct.] § 3. Each town shall, for the purposes of town meetings, constitute an election precinct. [Laws 1861, p. 265, § 1.]

express vote to that effect; and the rule is the same, if the town agent being himself an attorney, renders professional services for the town. *Langdon v. Castleton*, 20 Vt. R., 285.

(1) The Constitution declares that "the day of holding the annual township meeting shall be uniform throughout the State." Const., Art. X, § 5.

The township elections held in April are not general elections, within the meaning of § 5, Art. 10 of the Constitution. *The People ex rel. v. Couchman*, 15 Ill. R., 142. Opinion Atty. Gen. Edsall, Feb. 11, 1873.

(2) *Form of Notice of Annual Township Meeting and Election.*

The election of township officers being no longer a matter incident to the township meeting, but a distinct proceeding to be conducted in the manner of general elections, it is essential that notice should be given of each. This may be done in a single notice substantially in the following form:

ANNUAL TOWNSHIP MEETING AND ELECTION.

NOTICE is hereby given to the legal voters, residents of the Township of.....County of....., Illinois, that the annual township meeting and election of officers of said township will take place Tuesday, the.....day of April proximo, being the first Tuesday in said month.

THE ELECTION will begin at the hour of 7 A. M. and close at 5 P. M. in the places designated as follows:

Precinct No. 1.....

Precinct No. 2.....

[and so on, if the township contain more than two precincts.]

The officers to be elected are:

One supervisor, Assistant Supervisor, One Township Clerk, One Assessor, One Collector, One Commissioner of Highways, in Highway District No. ..., Justices of the Peace, Constables and School Trustees.

And the electors will also vote to decide the following public question: Shall [*state the question*].

THE TOWN MEETING will open in, at the hour of 2 P. M., and after choosing a Moderator will proceed to hear and consider reports of officers, to appropriate money to defray the necessary expenses

58. Place of meeting.] § 4. The place of holding elections shall be some convenient place in the town, to be fixed by the electors, at their annual town meetings. [Laws 1861, p. 265, § 1.

59. Change of place of meeting.] § 5. Whenever it is desired to change the place of holding town meetings, and any twenty-five electors shall, before the time of giving notice of an annual town meeting, file with the town clerk a request in writing that a change be made, designating the place to which the change is desired, a notice of such request shall be included in the notices of such meeting, and the electors may vote for or against such proposition. The ballots for the proposed change shall read: "For changing the place of holding town meetings to (name of place proposed;" those against shall read: "Against changing the place of holding town meetings;" and if a majority of all the votes cast for and against such change shall be in favor

of the township, and to deliberate and decide on such measures as may, in pursuance of law, come before the meeting.

And especially to consider a proposition to [*state the special proposition, if any*].

Given under my hand this day of, A. D.

..... Township Clerk.

The time of calling the town meeting to order in the morning is prescribed by this Act, Art. VII, § 2, but no hour for closing is specified. The consideration of miscellaneous business continues until concluded. See Art. VIII, § 7. This act provides, however, that the general laws of the State in regard to elections, etc., shall apply to all elections to be held under this Act, Art. VII, § 8. This would seem to govern so far as the closing of the polls of the election at the town meeting is concerned. It is provided by the election law that the polls at elections shall continue open until seven o'clock in the afternoon. See post, "Elections," § 48.

Houses of public worship are, ordinarily, and *prima facie*, to be regarded as public places for posting notices of the call of a town meeting for assessing taxes. *Scammon v. Scammon*, 28 N. Hamp. (8 Fost.,) R., 419.

All that the law requires is that notice of the time and place of the town meeting shall be given. The notice need not be addressed to any one. *Baldwin v. North Bradford*, 32 Conn. R., 47.

The law requiring notice of the annual town meeting to be given is directory. The law fixes the time, and the place is fixed by the county board, of which every one is bound to take notice; therefore a failure to give the notice, as directed by the law, will not invalidate the meeting. 6 Hill R., 646; 3 Denio R., 526. See *Angell & Ames on Corp.*, § 488. *People v. Peck*, 11 Wend. R., 694.

Where the law requires notice of an election to be given, and the law itself does not fix the time and place of the same, but leaves that to be fixed in the notice of election, such notice given in substantial compliance with the law is essential to the validity of the election. *Cooley on Const. Limitations*, 602 and notes; *State v. Young*, 4 Iowa R., 561. But when both the time and place of the election and the officers to be elected are prescribed by law, the validity of the election will be sustained, although the notice prescribed by law was not given. *Ibid.* See also, *People v. Cowles*, 13 New York R.; *People v. Jones*, 19 Iowa R.; *People v. Hartwell*, 12 Mich. R., 508; *Opinion Atty. Genl. Edsall*, March 11, 1878.

At the first town meeting in new towns, three commissioners of highways are to be elected, whose term of office is to be decided by lot. See Art. 1, § 16, ante, p. 38.

In giving public notice, in the computation of time, the rule is, when an act is to be performed within a particular period, or on a particular day, from and after a certain day, to exclude the day named and include the day on which the act is to be done; or more concisely stated, it is to count one day in and the other out. Thus, in giving ten days' notice of an election or event to take place on the 10th of the month, the notice must be given or posted on the last day of the preceding month, in order to give ten days' notice. *Ewing v. Bailey*, 2 Scam. R., 420; *Hall v. Jones*, 28 Ill. R., 55; *Harper et al. v. Ely et al.*, 56 Ill. R., 179.

of changing to the place designated, the place shall be so changed.¹

60. Ex-officio judges of elections.] § 6. The supervisor, assessor and collector of the town shall be *ex officio* judges of all elections in their town, except as other (wise) provided by law. [Laws 1861, p. 265, § 1.

SPECIAL TOWN MEETINGS.

61. When called.] § 7. Special town meetings shall be held, when the supervisor, town clerk and a justice of the peace, or any two of said officers, together with at least fifteen voters of the town, shall file in the office of the town clerk a statement, in writing, that a special meeting is necessary for the interests of the town, and setting forth the objects of the meeting.² [Laws 1861, p. 222, § 8.

(1) *Request by Twenty-five Electors for Change of Place of Town Meetings.*
To the Town Clerk of the town of ——— :

The undersigned, twenty-five electors of said town of ———, do request that a change be made in the place of holding the town meetings of said town, to [set forth the place to which the change is desired].

Dated this ——— day of ———, A. D. 19—.

Notice of Request to Be Included in the Notice of Town Meeting.

To vote on the question of changing the place of holding town meetings, to [set forth the place to which the change is desired, as in the request], a request for that purpose, by twenty-five electors, having been duly filed with the Town Clerk.

(2) *Form of Statement to Be Filed in the Office of Town Clerk for Special Town Meeting.*

The undersigned, town officers and fifteen voters of the town of ———, in the county of ———, do state that a special town meeting is necessary for the interest of said town for the purpose of [here set forth the object of the meeting].

We would therefore request that immediate notice be given thereof, and that such meeting be held on the day ——— of ———, A. D. 19—.

Witness our hands this ——— day of ———, A. D. 19—.

L. B., Supervisor.

S. W. M., Town Clerk.

C. S., Justice of the Peace.

[Names of fifteen voters] of the Town.

It is not necessary that the statement for a special town meeting, should be addressed to any person. The statute does not require it. *Baldwin v. North Bradford*, 32 Conn. R., 47.

In the statement for a special town meeting it is only necessary to set forth the objects with such reasonable certainty as will notify all interested of the objects for which the meeting is called, and the time and place of meeting. *Alger v. Curry*, 40 Vt. R., 437.

As to who are voters of the town, and qualified to join in the statement for a special town meeting, is a question which the town clerk may determine. His decision that they are voters is conclusive for purposes of the town meeting. *State v. Town of Lime*, 23 Minn. R., 522.

62. Notice.] § 8. Notice of such special town meeting shall be given in the same manner and for the same length of time as other town meetings.¹ [Laws 1861, p. 222, § 8.]

63. Form of notice—Restriction.] § 9. The notice shall set forth the object of the meeting, as contained in the statement filed with the town clerk, and no business shall be done at a special meeting except such as is embraced in such statement and notice. [Laws 1861, p. 222, § 8; p. 223, § 9.]

To render a special town meeting legal, it should appear that a statement, as required by law, that the meeting was necessary, was filed in the office of the town clerk. The record of a special town meeting, reciting the filing of the proper statement, would be sufficient *prima facie* to show such fact. *Brown v. Witham*, 51 Maine R., 29; *Lemington v. Blodgett*, 37 Ill. R., 210.

"A town meeting, either annual or special, should be held at the place appointed in the notice for the holding thereof, and should not be held at several different places in the town upon the same day." *Frantz v. Patterson, et al.*, 123 Ill. Appel. Court 13.

"A town meeting, either annual or special, is an assemblage of the electors of the town at the place appointed, for the holding of such town meeting, and may not be held at several different places in the town upon the same day." *C. & E. I. R. R. Co. v. The People*, 206 Ill. 296.

(1) *Form of Notice for Holding Special Town Meeting.*

SPECIAL TOWN MEETING.

Whereas, the supervisor, town clerk, and a justice of the peace [*or as the case may be*], together with fifteen voters of the town of ———, have, in writing, filed in my office a statement that a special town meeting is necessary for the interest of said town, setting forth the object of the meeting.

The legal voters and electors of the said town of ——— are therefore hereby notified that a special town meeting will be held at ———, on the ——— day of ———, A. D. 19—, to commence at

for the purposes following, to-wit:

To [*here enumerate specifically, in proper order, the subjects to be acted upon as contained in the statement filed*].

Being the objects contained in the said statement filed in my office.

Given under my hand at ———, this ——— day of ———, A. D. 19—. S. W. M., Town Clerk.

The town clerk, in giving notice of a special town meeting, performs a mere ministerial duty, and the electors cannot be limited in their action at the meeting by the phraseology of the notice, provided the statement of the objects for which the meeting is called is substantially correct. *Ball v. Warren*, 36 Conn. R., 83.

The presumption is, that the number of a notices required by law have been duly posted. *State v. Town of Lime*, 23 Minn. R., 521.

It is no objection to the legality of a town meeting, that the notices therefor were not posted in the places where such notices had usually been posted in the town, it not appearing but that they were posted in public places, as required by the statute. *Stoddard v. Gilman*, 22 Vt. R., 568.

Form of Resolution Postponing Subject for Special Town Meeting.

Resolved, That the subject of [*state the subject briefly*] being under consideration at this the annual town meeting, A. D. 19—, for the town of ———, and there not being time to consider the same, it is postponed, to be considered at a future special town meeting that may be called for that purpose.

64. Powers of special meeting.] § 10. The electors at special town meetings, when convened, shall have power:¹

1. To fill vacancies in the offices of town officers, when the same shall not have already been filled by appointment.

2. To provide for raising money for repairing highways, or building or repairing bridges, in cases of emergency, and to direct the building and repairing thereof.

3. To act upon any subject within the powers of the electors at any annual town meeting, which may have been postponed for want of time at the preceding annual town meeting, to be considered at a future town meeting. [Laws 1861, p. 223, § 9.]

(1) Special town meetings have no jurisdiction to act upon any subject not specially conferred upon such meetings by law. The powers conferred upon the electors at the annual town meeting cannot be extended by implication to special town meetings. *People v. Works*, 7 Wend. R., 486. By the statute of New York, special town meetings have power to supply vacancies in certain cases; to raise moneys for the support of common schools, or the poor, when those subjects were not acted upon at the annual town meeting; and to deliberate in regard to suits for or against the town, and to raise moneys therefor. And it is decided that they have no other power. See same case before cited. This decision will apply to the statute of Illinois. It will be observed, however, that special town meetings have authority to act upon any subject within the powers of the electors at the annual town meeting where the subject was postponed for the consideration of a special meeting. When it is desired to postpone the consideration of any subject to a subsequent special town meeting, the proposition should be reduced to writing in the form of a resolution or order, and being adopted by the meeting, should be recorded by the clerk upon the minutes of the proceedings of the meeting, that in case of controversy it may be shown with certainty what subjects were postponed or laid over. Such resolution may be in the following form:

A town meeting specially called to vote a tax for a given purpose is not authorized to act upon any subject beyond a vote upon such tax. *Atwood v. Lincoln*, 44 Vt. R., 332.

Special town meetings may be held to vote on the question of borrowing money to build bridges. See Div. II, "Roads and Bridges," § 20, post.

Special town meetings may be called to fill vacancies in town offices, where the same have not been filled by appointment; but if the vacancy has been filled by appointment, it cannot be filled by special election. Township Organization Laws, Art. IV., § 9; Opinion Attorney General Edsall, May 23, 1873, citing *People v. Van House*, 18 Wend. R., 515.

The inhabitants of a town cannot avoid being bound by their vote, at a meeting legally called, by proof that the vote was passed near the close of the meeting, and after a portion of the voters had retired. *Bean v. Jay*, 23 Maine R., 117.

"The town meeting, either general or special, contemplated by the statute, is a meeting which may be attended by all the electors of the town at which they may transact business pertaining to the affairs of the town, including the levy of taxes. This tax was not voted at any such meeting, but instead, the propriety of levying tax the tax was submitted at a special election, held in the town of Georgetown, polls being open and ballots received in each of the four voting precincts in that town, as in any other election. No meeting at all was held which could have been attended by all the voters of that town. The statute does not provide for the levy of taxes in pursuance of a vote of the electors of the town taken at a special election. This tax could have been imposed by the electors, either at a general or special town meeting, but its levy could not be authorized at a special election. The objection to the \$9,000 tax should therefore have been sustained." *C. C. C. & St. L. Ry. Co. v. The People*, 205 Ill., 585.

"A tax which may be levied by vote of the electors at a regular or special town meeting cannot be authorized by the vote of the electors at a special election held for that purpose in the various precincts of the town." *C. C. C. & St. L. Ry. Co. v. The People*, 205 Ill., 582.

"The tax for building or repairing bridges in case of an emergency authorized by § 10 of Art. 6 of the Township Organization Act to be levied by the vote of the electors in special town meeting cannot be authorized by the vote of the electors at a special election, upon such question held in the various precincts of the town." *C. & E. I. R. R. Co. v. The People*, 206 Ill., 296.

ARTICLE VII.

TOWN OFFICERS ELECTED BY BALLOT—MODE OF CONDUCTING ELECTIONS FOR TOWN OFFICERS.

65. Election of officers.
66. Term of office of town clerk, assessor and collector.
67. Repeal.
68. Trustees of school.
69. Organizing town meeting—Moderator.
70. Powers of moderator.
71. Oath of moderator.
72. Clerk—Minutes.
73. Clerk *pro-tem*.
74. Ballot boxes—Polling places—Canvass—Town meetings.
75. General election laws to apply.
76. Recess.
77. Result of election.
78. Tie vote.
79. Persons elected notified.
80. List of town officers filed with county clerk.

65. Election of officers.] § 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly:* That Section 1 of Article 7 of "An Act to revise the law in relation to township organizations," approved and in force March 4, 1874, as amended by Act approved June 15, 1887, in force July 1, 1887,

Where the representation of any town in the county board was less under any special act than the representation provided by the law of 1874, the special Act is by that law expressly superceded and made to cease to operate, and it matters not that the exclusive representation of a city which is a part of a town, is less by the act of 1874 than under the special act, or be taken away entirely, so that of the town in which the city is situated be increased. *Allen v. The People ex rel.*, 84 Ill. R., 502.

The number of commissioners of highways of a town is three. The term of office is three years. At the first town meeting three commissioners are elected, and the term of office of each is agreed upon by lot, so that one expires every year, and thereby there is one commissioner to be elected at every annual town meeting. See ante p. 38, Art. 1, § 16.

If a town fails or neglects to elect the number of justices or constables to which it would be entitled under the law, and should elect a less number, having had a full number for the preceding term, this would oust all those of the previous term; neither could hold over on the ground that no one had been elected in his place. *People v. Jones*, 17 Wend. R., 81.

Whether a person can hold more than one town office at the same time is a question frequently raised. In the absence of any express prohibition by the statute, one person could hold such offices at the same time as are not incompatible with each other. At common law the only offices incompatible with each other were such as were subordinate and interfering, as where one was judicial, and the other ministerial, and the latter was directly subordinate to the former. Citing *Bouv. Law Dict.*, 4 Sergt & Rawle; *Opin. Att'y Gen'l Cole (Minn.)*, Vol. 1 p. 260.

The acceptance of a second office incompatible with the first, vacates the first office. *People v. Carrique*, 2 Hill. R., 93.

Although a majority of the electors of a town may not attend and vote at a town meeting, yet persons receiving a majority of the votes of those that attend, for offices, will be legally elected. *Opin. Att'y Gen'l Coe (Minn.)*, Vol. 1, p. 296. And although a town meeting may be invalid by reason of irregularity, yet the town officers elected at such meeting are officers de facto, and as such their acts are binding on the town. *Cushing v. Frankfort*, 57 Maine R., 541.

be amended so as to read as follows: At the annual town meeting in each town, there shall be elected by ballot, one supervisor (who shall be *ex-officio* overseer of the poor), one town clerk, one assessor and one collector, who shall severally hold their offices for one year, and until their successors are elected and qualified, and such justices of the peace, constables and highway commissioners as are provided by law: *Provided*, That in any town or city not included within the limits of any town (except in Cook county) having four thousand inhabitants, there shall be elected one additional supervisor, to be styled assistant supervisor; in towns having six thousand five hundred inhabitants, there shall be elected two assistant supervisors; and so for every additional twenty-five hundred inhabitants, there shall be elected one additional supervisor—the population of towns to be ascertained by the last federal or state census preceding the election. [As amended by Act approved May 10, 1901. In force July 1, 1901. Laws 1901, p. 313.]

TOWN OFFICERS—BIENNIAL ELECTIONS.

AN ACT to provide for the election of town clerks, township assessors and township collectors in counties under township organization and to fix their term of office. [Approved June 14, 1909. In force July 1, 1909. Laws 1909, p. 470.]

66. Term of office of clerk, assessor and collector.] § 1
Be it enacted by the People of the State of Illinois, represented in the General Assembly: That the town clerks, township assessors and township collectors elected at the annual town meetings in their respective towns in the counties now under township organization, on the first Tuesday of April, 1910, and every two years thereafter and in counties which may hereafter adopt township organization, shall hold their offices for two years, and until their successors are elected and qualified, and the term of said office is fixed at two years.

67. Repeal.] § 2. All Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed.

68. Trustees of schools.] In counties adopting township organization, in each and every township whose boundaries coincide and are identical with those of the town, as established under the township organization laws, the trustee or trustees shall be elected at the same time and in the same manner as the town officers. In all such townships, if no trustees are elected at the stated town meeting, and when vacancies occur in the board, an election of trustee or trustees shall be ordered by the

remaining trustee or trustees of schools, through the township treasurer, as provided in section nine (9) of this article. [School Act, Revised Stat. chap. 122, Art. III, § 19.

69. Organizing town meeting—moderator.] § 2. The electors present at any time between the hours of eight and nine o'clock in the forenoon of the day on which there is an annual or special town meeting, shall be called to order by the town clerk, if there be one; in case there be none, or he is not present, then the voters may elect, by acclamation, one of their number chairman. They shall then proceed to choose one of their number to preside as moderator of such town meeting.¹ [Laws 1861, p. 223, § 1.

70. Powers of moderator.] § 3. The moderator so chosen shall have the same power and be subjected to the same penalties as other judges of election.²

71. Oath of moderator.] § 4. Before the moderator of any town meeting shall enter upon the duties of his office, he shall take an oath faithfully and impartially to discharge the duties of such office—which oath may be administered by the town clerk, or other proper officer.³ [Laws 1861, p. 223, § 2.

(1) The hour fixed by the statute for the opening of the annual town meeting is 2 p. m. "At such meeting, a moderator shall be chosen to preside, by the electors present, and the township clerk shall act as clerk of said meeting and keep a record of the proceedings thereof." See ¶ 64, p. 80, post. The hour 2 p. m. having arrived, it is the duty of the township clerk to call the meeting to order and take the chair as temporary president and conduct the proceeding of choosing the moderator. In case the clerk should be absent, any elector present may call the meeting to order and move that A. B. act as chairman to conduct that proceeding. Whether a town meeting may, for sufficient reason, adjourn from the place appointed to a more convenient place is a question that has not been raised since the transfer of the authority to fix the place from the township electorate to the county board. But, on the general principle that a legislative body is the judge of its own organic necessities, doubtless such action may be taken after the meeting has been duly organized, and sufficient time given for the arrival and full expression of a quorum of the electorate. To render such adjournment to another place legal and binding on the township, ample notice should be posted on the door of the hall where the organization was effected, so that any electors arriving after the adjournment may know whither to proceed. But there seems to be no authority for an adjournment to another day.

(2) As the law now is, the moderator is not a judge of the election, but chairman or "speaker" of the town meeting. (See Art. VIII, "Mode of conducting town meetings"—note.) In the early practice of New England, no one could speak without his permission, and he could impose fines for disorderly behavior and compel refractory persons to withdraw. These powers still pertain to the office. (See ¶ 88, post.) As the town officers were chosen viva voce by the electors in public assembly, he was the real judge of the election. This function of the moderator was preserved after the introduction of the ballot system by the requirement that, when the voting closed, all the ballot boxes should be brought from the several precincts to the place where the "miscellaneous business" of the town was transacted. All the votes were there counted and the moderator officiated as president of the canvassing board. But the statute of 1889 (¶ 74, § 7, on the following page), constituting the inspectors in each precinct a canvassing board for the precinct, has divested the moderator of the character and faculty of an inspector or judge of the election, leaving to him only the function of president of the township (legislative) assembly.

(3) *Form of Oath of Moderator of Town Meeting.*

I do solemnly swear [or affirm, as the case may be], that I will support the Constitution of the United States, and the Constitution of the State of

72. **Clerk—Minutes.] § 5.** The town clerk last before elected or appointed, shall be the clerk of the town meeting, and shall keep faithful minutes of its proceedings, in which he shall enter, at length, every order or direction, and all rules and regulations made by such meeting. [Laws 1861, p. 223, § 3.

73. **Clerk pro tem.] § 6.** If the town clerk be absent, then such person as shall be chosen for that purpose by the electors present, shall act as clerk of the meeting. [Laws 1861, p. 224, § 4.

74. **Ballot boxes—Polling places—Canvass of votes.] § 7.** The town shall supply a suitable ballot box or boxes, to be kept and used in like manner as ballot boxes in other elections. In incorporated towns or incorporated villages whose limits are co-extensive with the limits of a town, or in any organized town where the number of voters at the last preceding general election exceeded four hundred and fifty, the county board may require one or more additional ballot boxes and places for the reception of votes to be provided, which places shall be selected with reference to the convenience of the electors of the town, and the county board, in such cases, shall designate at which of said polling places the miscellaneous business of the town shall be transacted, and shall appoint three persons in each precinct to serve as judges of election: *Provided, however,* that in towns which lie wholly within the limits of an incorporated city and in any town whose territorial limits are co-extensive with the territorial limits of any incorporated city, village or incorporated town, the common council of such city, or the board of trustees of such incorporated village or town shall divide such towns into election precincts, and designate the voting place in each precinct, and appoint three judges of election for each precinct, who may be the same persons as are appointed as judges of election for city, town or village officers, held on the same day; and shall also designate the place where the miscellaneous business of the town shall be transacted. In such towns, it shall be lawful to print or write the names of candidates for city and township officers,

Illinois, and that I will faithfully and impartially discharge the duties of the office of moderator at this town meeting, according to the best of my ability.

The foregoing form of oath of moderator comprises the form prescribed by the Constitution for official oaths in all cases, with the addition of the words "and impartially," as required by the above section. If the position of moderator is an office, these words are unnecessary. See Const., Art. 5, § 25.

The clerk should make a record upon the minutes of the meeting of the fact that the moderator was duly sworn before entering upon the duties of his office.

Where, in pursuance of law, an oath of office is administered in open town meeting, in presence of the town clerk, the clerk's record of the fact is competent evidence of the administration of the oath. *Briggs v. Murdock*, 13 Pick. R., 305.

The neglect of the moderator or clerk to take the oath as prescribed, would not, it seems, vitiate the election of officers at town meeting. An oath irregularly administered, for example, upon a book other than the Holy Bible, the parties administering it, and taking it, supposing it a Bible, is a valid oath. *People v. Cook*, 4 Seld. R., 67.

on one ballot, and use only one ballot box at each voting place. And in all towns that are thus divided into voting precincts, it shall be the duty of the town clerk, or if there be no town clerk, it shall be the duty of the county clerk to post up, in three of the most public places of the town, a notice of each of the places in the town where the county board, city council or board of trustees has directed and required the election to be held, and of the place designated for the transaction of the miscellaneous business of the town. The town meeting for the transaction of such miscellaneous business in such towns shall be held at the hour of two o'clock in the afternoon of said day. At such meeting, a moderator shall be chosen to preside, by the electors present, and the town clerk shall act as clerk of said meeting, and keep a record of the proceedings thereof. The judges of election, in their respective precincts, shall cause two persons having similar qualifications with themselves to act as clerks of such election, and said judges and clerks shall conduct such election as nearly as may be in accordance with the general election laws of this State so far as applicable, except that no registration of voters shall be required; and immediately upon closing the polls, they shall canvass the votes polled in the manner provided in the general election laws of the State, and make a written statement or certificate of the number of votes cast at such election for each person voted for, and the office for which such person received such votes, and shall, within forty-eight hours thereafter, cause such certificate and the poll-lists, together with the ballots cast at such election to be separately sealed up and transmitted to the clerk of the town. The supervisor, together with the assessor and collector, shall, within five days thereafter, meet and canvass said returns and declare the result of said election: (1) *Provided, further*, that this Act shall not be construed in any manner to amend, modify or repeal any of the provisions of an Act entitled, "An Act regulating the holding of elections and declaring the result thereof in cities, villages and incorporated towns in this State," approved June 19, 1885, nor shall the provisions of this Act apply to or affect any city, village or incorporated town that has, by vote of the electors thereof adopted the provisions of the Act last hereinabove mentioned. [As amended by Act approved May 25, 1889. In force July 1, 1889. Laws 1889, p. 359.]

(1) The county board in designating separate places for receiving votes at a town election, cannot meet and have a verbal understanding where the places shall be. In the case of a city council exercising like authority, it was held that the council should take such formal action before the election that citizens could know from its records where the election was to be held, and that this must be done a sufficient length of time in advance to enable the town clerk to give notice of the election. *The People v. Gouchenour*, 54 Ill. R., 123.

75. **General election laws to apply.]** § 8. The general laws of the State in regard to elections and qualifications of voters shall apply to all elections to be held under this act, so far as the same may be applicable, except as herein otherwise provided: *Provided*, that no registration of voters shall be required.¹

76. **Recess.]** § 9. A recess may be taken during the time necessary for the transaction of the business of the town other than the election of officers by ballot.

77. **Result of elections.]** § 10. The canvass being completed, a statement of the result shall be entered at length by the clerk of the meeting in the minutes of the proceedings, to be kept by him as before required, which shall be publicly read by him to the meeting; and such reading shall be deemed notice of the result of the election to every person whose name shall be entered on the poll list as a voter.² [Laws 1861, p. 226, § 22.]

[The foregoing § 9 (§ 76) has been repealed by effect of the Act of May 20, 1889 (see § 74, ante), § 10 (§ 77) is no longer applicable to the township officers which the statute says shall be elected by ballot, i. e., supervisor, clerk, assessor, collector, highway commissioners, justices, constables and trustees of schools. If applicable at all, it is only to road overseers, poundmasters, and such other functionaries as may be chosen at the town meeting, or appointed in such manner as the town meeting may, by ordinance or resolution, direct.]

(1) The general law in regard to elections and qualification of voters is to be observed, with limited exceptions, in conducting all elections under this Act. This is required by the above section, and it is to some extent a new principle in the township organization system in this State. As the law formerly existed, the election of town officers was a matter incident to a town meeting, and was under the control of the electors. But by the terms of this Act the election of town officers is regarded as a separate proceeding, to be conducted in the manner of general elections. This Act provides that the supervisor, assessor and collector of the town shall be judges of all elections in their town, except as otherwise provided by law. See ante, p. 74, Art. VI, § 6. There is no provision of law regulating elections in this regard in towns, whether for town officers or otherwise, except the general election law. It seems to be the intention of this Act, as drawn from its various provisions, that the election of such town officers as is required by law to be by ballot shall be conducted under the charge of the regular judges of election of the town, in connection with the moderator of the town meeting; it being provided that the moderator shall have the same power as other judges of election. See ante, p. 79, Art. VII, § 3. See post "Elections."

It is further provided by this Act (ante, p. 37, Art. I, § 12), that the county board shall appoint three electors to the town to be judges of election at the first town election (meaning the election at the first town meeting) in said town. If, therefore, it is considered necessary to have judges of election at the first town meeting, these officers are equally as important at all subsequent town meetings at which elections are held. This being the intention of the law, the moderator and the three regular judges of election of the town will form a board of judges of election, and take charge of the ballot-box, and conduct the election of town officers and canvass the ballots the same as at any other election under the general election law of the State. For duties of judges of elections, qualification of voters, canvassing votes and manner of conducting the election of town offices, see the general election law, post, "Elections."

When one moves into a town, or, being a resident in a town, arrives at full age he at once becomes a member of the corporate body, without any other act, and without his consent. *Lord v. Chamberlain*, 2 Me. R. (2 Grnl.), 69; *Richmond v. Vassalborough*, 5 Me. R. (5 Grnl.), 342.

(2) The law seems to contemplate that a canvass of votes shall be made in like manner as prescribed by the general election law of the State. See "Elections," post. The following may be the form of the canvass:

78. Tie vote.] § 11. In case two or more persons shall have an equal number of votes for the same office, the question of which shall be entitled to the office shall be decided between such person by lot, under the direction of the town clerk, but he shall give each party notice of the time and place of drawing lots.¹ [Laws 1861, p. 226, § 22.

79. Persons elected notified.] § 12. The clerk of every town meeting, within ten days thereafter, shall transmit to each person elected to any town office, whose name shall not have been entered on the poll list as a voter, a notice of his election. [Laws 1861, p. 226, § 23.

[This section has been modified by the effect of later statutes which separate the township election from the township meeting. Every township officer elected is to be officially notified of his election. (See form of notice, p. 85.) The note below relates to road overseers, etc., chosen in the town meeting.]

Form of Canvass of Votes by Precinct Inspectors.

At an election in the.....precinct, township of----- in the county of-----, and state of Illinois, held at-----in said precinct, on the---day of April, in the year A. D. 19--, the following named persons received the number of votes annexed to their respective names for the following described offices, to-wit:

- P. R. had votes for Supervisor.
- W. R. had votes for Supervisor.
- O. H. had votes for Township Clerk.
- J. S. had votes for Township Clerk.
- L. M. had votes for Highway Commissioner.

[and in the same manner for any other persons voted for.]

Certified by us.

(Clerks sign here.)

A. B.,
C. D.,
E. F.,

} Inspectors of Election.

[This precinct canvass, with poll lists and ballots, must be returned within 48 hours to the township clerk. See ¶ 74, p. 80, 81, ante.]

Form of Statement of Result of Canvass by Township Returning Board.

The following is a statement of the result of the canvass of votes by ballot, for the election of officers at the township election in the township of in the county of....., State of Illinois, the.....day of....., A. D. 19.., as canvassed by the township returning board:

- H. G. had votes for Supervisor.
- N. C. had votes for Supervisor.
- C. T. had votes for Township Clerk.
- T. J. had votes for Township Clerk.
- G. N. had votes for Highway Commissioner.

[and so on, giving a statement of the vote cast for each person.]

(Clerks sign here.)

A. Y.
B. W.,
C. V.,

} Township
Returning
Board.

80. List of town officers filed with county clerk.] § 13. The town clerk shall file in the office of the county clerk a list of the names of all town officers elected at the annual town meeting, within twenty days after such election shall be held. [Laws 1861, p. 226, § 24.]

Where no certificate or other formal mode of making known to a person his election to a public office is required by law, the result of the election as ascertained and announced at the close thereof is conclusive upon the election of officers, and cannot afterward be reconsidered or varied. *State v. Warren*, 1 Houston, Del. R., 39.

Where the candidates are present at the announcement of the tie vote at town meeting, verbal notice may be given them by the clerk, informally, and the drawing lots take place at once, or at some convenient time named. No method of proceeding is prescribed in deciding the question between candidates, but the drawing is under the direction of the town clerk; he will therefore direct the manner in which to proceed. He may prepare two pieces of paper, on one may be written the title or name of the office in question, leaving the other blank; then fold each alike and place them in a box, from which let the candidates draw; the person drawing the paper containing the name of the office to be entitled to it and declared duly elected. In case the candidates, or either of them, fail to attend upon being notified, then the clerk can select some qualified elector to draw for the absent candidate.

It is proper that some record should be made by the town clerk of the manner of disposing of the question of a tie vote between candidates, that the records of the town may always show who are elected officers. It would therefore be well for the clerk to add a memorandum at the close of the minutes of proceedings of the meeting, after the signatures of himself and the presiding officer, in the following form:

Form of Notice by Town Clerk of Drawing Lots in Case of a Tie Vote Between Candidates.

To J. S. :

Sir—You having received, at the late town election, an equal number of votes with D. K., for the office of *Supervisor*, of the town of ———, are hereby notified that the question of which of you is entitled to said office will be decided by lot at my office in said town, on the ——— day of ———, A. D. 19—, at the hour of *ten o'clock*, in the *forenoon*; that, should you fail to appear at such time and place, the matter will be decided in your absence.

Dated at ———, this ——— day of ———, A. D. 19—.

J. B., Town Clerk.

Form of Memorandum of Decision of Tie Vote Between Candidates.

At the annual town election in the town of ———, in the year 19—, A. B. and C. D. having had an equal number of votes for the office of ———, the question of which should be entitled to said office, was, on the ——— day of ———, 19—, duly decided between them by lot, and it was decided that the said A. B. should be entitled to said office.

J. B., Town Clerk.

ARTICLE VIII.

THE MODE OF CONDUCTING TOWN MEETINGS FOR THE TRANSACTION OF MISCELLANEOUS BUSINESS.¹

81. Hour of meeting, etc.
82. Clerk of meeting—record.
83. Clerk *pro tem*.
84. Duties of moderator.
85. Motion—How decided.
86. Division of voters.
87. Miscellaneous business closed—Reconsidering motion.
88. Disorderly conduct.
89. Qualification of voters.
90. Proceeding with election.

81. Hour of meeting, etc.] § 1. At the hour of two o'clock in the afternoon, on the day of an annual or special meeting, the polls shall be closed, and the moderator shall call the meeting to order for the transaction of miscellaneous business. [Laws 1861, p. 224, § 7.]

[As the law now is, the town meeting only begins at 2 p. m., at which hour the moderator or president of the meeting is chosen. The election is not to be suspended nor the polls closed between 7 a. m. and 5 p. m., but the voting for candidates to fill the township offices proceeds elsewhere while the town meeting is in session.]

Notice by Township Clerk to a Person Elected to a Township Office.

To G. N., Esq., of the township of ———, in the county of ———:

You are hereby notified that at the annual election [*or special, as the case may be*] held in said township at ———, on the ——— day of ——— A. D. 19—, you were duly elected to the office of ———

Given under my hand at ———, this ——— day of ———, A. D. 19—.

J. B., Town Clerk.

(1) Rules for town meetings. Town meetings, provided by this Act, are conventions or assemblies of the legal voters of the town, forming what is termed deliberative assemblies, for the transaction of business pertaining to their local interests—exercising certain powers, not delegated to their representatives, each elector appearing and acting for himself, and being accountable to no one for his acts. Meetings of this kind are conducted according to certain rules which experience has shown to be fit and necessary for that purpose. The rules necessary in conducting the ordinary business of a town meeting are few and simple, and are such as would occur to the good sense of every man of ordinary intelligence. In disposing of business properly and with dispatch much depends upon the moderator or presiding officer; if he thoroughly understands his duties, and performs them properly and promptly, he will greatly facilitate the business of the meeting. The general duties of the presiding officer, as laid down in the books of parliamentary practice, are the following:

To open the sitting, at the time to which the assembly is adjourned, by taking the chair and calling the members to order.

82. Clerk of meeting—Record.] § 2. The town clerk, if there be one and he is present, shall act as clerk of the meeting, and shall keep faithful minutes of the proceedings, in a book

To announce the business before the assembly in the order in which it is to be acted upon.

To receive and submit, in the proper manner, all motions and propositions presented by the members.

To put to vote all questions which are regularly moved, or necessarily arise in the course of the proceedings, and to announce the result.

To restrain the members, when engaged in debate, within the rules of order.

To enforce on all occasions, the observance of order and decorum among members.

To receive all messages and other communications, and announce them to the assembly.

To inform the assembly, when necessary, or when referred to for the purpose, on points of order or practice.

To name the members (when directed to do so in a particular case, or when it is made a part of his general duty, by a rule), who are to serve on committees; and, in general.

To represent and stand for the assembly, declaring its will, and, in all things, obeying implicitly its commands. Cushing's Manual.

The principal duties of the moderator are briefly defined by this act to be; to preside at the town meeting; to make announcement of the business of the meeting; to preserve order, and to decide all questions of order. To ascertain and declare the result of votes taken on all questions. To suppress disorderly conduct.

After the meeting is organized, by the election and qualification of the proper officers, the moderator should announce that the meeting is organized and ready to proceed to business—In the absence of any rule to the contrary, it will be proper for the moderator to direct the order in which the various subjects for action should be taken up, and announce each as it comes up in its order for action.

It is the practice with all legislative assemblies to adopt standing rules for their government, which the presiding officer is to observe and enforce. It would not be improper for the electors of a town at a town meeting to pursue a similar course, and adopt standing rules regulating the order of business and the manner of conducting all town meetings, not inconsistent with the law, to be observed and enforced by the moderator; this would greatly facilitate business, secure uniformity and relieve the moderator from embarrassment in arranging the order of business at each meeting.

The rules governing the conduct of deliberative assemblies are called "parliamentary rules." They are so called from their origin in the English Parliament. These rules, in process of time, as a whole have become very extensive, and, indeed, somewhat intricate. In conducting a town meeting it would be impracticable to attempt to observe that nicety in regard to these rules which is adhered to in legislative assemblies.

An important feature in parliamentary practice is, that the sense of the meeting is taken through the agency of a motion, made by some member and seconded by another. After a motion is thus made and seconded, the presiding officer proceeds promptly to state it to the meeting, thus: "Gentlemen, it is moved that " [stating the motion as made]. "Those in favor of this motion will say aye." "Those opposed will say no." If the motion prevails, he should announce the vote thus: "It is carried in the affirmative," or "The motion has prevailed." If the motion fails, then say, "The motion is lost."

After the moderator has thus declared the vote, it becomes the sense of the meeting, and will stand as such until rescinded or reconsidered by another motion made for that purpose.

Where a vote is nearly equal, and it is difficult to determine the result, the moderator should not hastily declare the vote, but should say: "The ayes seem to have it," or "The nays seem to have it." If no one interposes, he will declare the result as it seems to him. If any one wishes to interpose, deeming that it seems to the moderator differently from the fact, he should do so by promptly calling for a division. This may be done by a "show of hands," by rising, or by literally dividing the house—that is, those voting in the affirmative all going to one side of the room, and those in the negative going to the other. After the vote has been declared by the presiding officer, it is too late to call for a division.

It is a general rule that a motion to lay a proposition on the table and a motion to adjourn is not open to debate. But otherwise with a motion to lay on the table for a time limited, or to adjourn to a day certain.

The moderator should be prompt in putting motions. It is no part of his duty to invite debate.

Parliamentary rules, as existing by custom, may be modified by rules fixed by the assembly.

On the subject of parliamentary law generally, see Appendix, post.

to be known as the town record, in which he shall enter at length every order or direction, and all rules and regulations made by such meeting, which entry shall be signed by himself and the moderator of the meeting. (1) [Laws 1861, p. 223, § 3.]

(1) *Record of Proceedings of Annual Township Meeting.*

The annual township meeting of the township of ———, county of ———, Illinois, convened in ——— the ——— day of ———, A. D. 19—, at the hour of 2 P. M.

Meeting called to order by ———, Township Clerk.

On motion of ———, Mr. ——— was duly chosen moderator, and being first duly sworn by ———, J. P., [*or township clerk, as the fact may be*] assumed the chair.

The moderator having stated that the first business in order was the hearing of the annual reports of township officers, such reports were read and action taken thereon in the following order:

Supervisor's fiscal report read by the clerk, received, and on motion of ———, approved, placed on file and ordered to be published.

[The township clerk will read the report of each township officer who is by law required to submit an annual statement of his official doings. When a report has been read, the proper motion is that it be received, but in general practice it is received without such motion unless objection is made, in which case a formal vote on the reception is necessary. (See Haines' Parliamentary Law.) When received, the question is, shall it be approved or adopted, etc. The statute provides that "each and every officer who shall have the custody of public funds shall, on the expiration of each fiscal year, prepare a statement of the funds received and expended by him during the year, — and such officer shall cause such statement to be published in some newspaper of the county," etc. An order to publish would seem, therefore, to be unnecessary.]

The moderator announced as next in order, petitions, resolutions and by-laws.

Mr. ——— submitted an order for the establishment and erection of a pound at ——— within sixty days from this date, for the impounding of animals; that the same be constructed at a cost not to exceed ——— dollars, under the direction of the poundmaster, who shall submit all bills for the same, verified by oath, to the board of auditors. Agreed to without a division.

[When a division of the assembly is ordered on a question of importance, a more satisfactory mode than the count by rising or holding up hands would be by tellers between whom should pass and be counted first the ayes, and then the nays, as in the house of representatives. One teller should represent the affirmative, the other the negative, side of the question. In case tellers be appointed, the fact and their names should appear in the minutes.]

By Mr. ——— the following resolutions [set forth the same.] Adopted.

My Mr. ——— an ordinance to [set forth the ordinance in full.] Referred to a special committee with instruction to report to a special meeting to be called the last week in August.

[In like manner set forth the proceedings in each order of procedure as they transpire. For appropriate rules of procedure, see the Township Clerk's Manual, pp. 40, 41, 42. The record of every meeting should be signed.]

A. J. M., Township Clerk.

J. W. C., Moderator.

83. Clerk pro tem.] § 3. If there is no such clerk present, the meeting shall choose a clerk pro tem., who shall take a like oath as that required of the moderator, and shall act as clerk of the meeting.¹ [Laws 1861, p. 224, § 4.]

84. Duties of Moderator.] § 4. The moderator of such meeting shall preside thereat, make announcement of the business before the meeting, preserve order, and decide all questions of order. [Laws 1861, p. 224, § 5.]

85. Motions—How Decided.] § 5. All questions upon motions made at town meetings shall be determined by a majority of the electors present and voting, and the moderator shall

In case there is no town clerk, or he is absent, at the opening of the town meeting, the entry in the minutes of the meeting may be as follows:

The town clerk not being present [*or as the case may be*], on motion Mr. L. M., one of the voters present, was elected by acclamation as chairman, whereupon the electors proceeded to choose one of their number to preside as moderator of the meeting, and Mr. A. B. was chosen as such moderator.

The moderator may be chosen by ballot; this mode of choosing moderator is the rule in some of the eastern States, where the position is considered an important one, and the choosing is often zealously contested.

In case of choosing a clerk pro tem (time being) of the meeting, the following may be the form of entry in the minutes:

The town clerk being absent, E. F. was chosen clerk *pro tem.*, and was duly sworn.

It seems that the clerk's record of the proceedings of a town meeting will be considered sufficient evidence of the facts therein set forth, as transpiring at that meeting. *Briggs v. Murdock*, 13 Pick. R., 305.

It is competent for a town clerk to rectify errors which he has made in recording the proceedings of the town, by amending the record, so that it shall state those proceedings truly. *Boston Turnpike Co. v. Pomfort*, 20 Conn. R., 590; *Chamberlain v. Dover*, 13 Maine R., 466.

Town records may be amended by the person who was in the office at the time of the proceedings had, when the record is to be used as evidence in a suit in court, provided satisfactory evidence can be shown of the truth of the facts alleged. *Cass v. Bellows*, 31 N. Hamp. (11 Fost.) R., 501; *Low v. Pettingill*, 12 N. Hamp. R., 337; *Pierce v. Richardson*, 37 N. Hamp. R., 306.

One formerly a town clerk cannot, after he has left the office, amend a town record made by him when clerk. *Hartwell v. Inhabitants of Littleton*, 13 Pick. (Mass.) R., 229. But held otherwise in New Hampshire. *Gibson v. Bailey*, 9 N. Hamp. R., 168.

A town clerk may amend a record, according to the truth, made by him when in office under a former election. *Wells v. Batelle*, 11 Mass. R., 477. The intervening election is held to be substantially a continuance of the clerk in the same office. *Hartwell v. Littleton*, 13 Pick. R., 229.

A town clerk's record of proceedings of a town meeting, as amended by himself, cannot be controlled by parol evidence. *Halleck v. Boylston*, 117 Mass. R., 469.

A writ of mandamus will issue to compel a town clerk to record the proceedings of a town meeting, as publicly declared by the moderator; also to correct his record to conform to such declaration. *Hill v. Goodwin*, 56 N. Hamp. R., 44.

(1) A certified copy of the proceedings of a town meeting, as kept and reported by a clerk pro tem to the town clerk, is admissible in evidence to show the vote of the meeting. *Hickok v. Shelbourne*, 41 Vt. R., 409.

ascertain and declare the result of the vote upon each question.¹ [Laws 1861, p. 224, § 6.]

86. Division of voters.] § 6. When the result of any vote shall, upon such declaration, be questioned by one or more of the electors present, the moderator shall make the vote certain by causing the voters to rise and be counted, or by dividing off. [Laws 1861, p. 224, § 5.]

87. Miscellaneous business closed—Reconsidering motions.] § 7. When the business of the meeting is concluded, the moderator shall make announcement thereof, and after such announcement is made all miscellaneous business shall be deemed concluded for that day, unless the electors shall, at the time of such announcement, order otherwise; but in no event shall any question which has been disposed of before such announcement be thereafter reconsidered, unless the motion therefor is sustained by a number of votes equal to at least a majority of all the names entered on the poll list on that day up to the time of making such motion. [Laws 1861, p. 224, § 7.]

88. Disorderly conduct.] § 8. If any person shall conduct in a disorderly manner at any such meeting, and, after notice from the moderator, shall persist therein, the moderator may order him to withdraw therefrom, and on his refusing may order any constable or other person to take him from the meeting and confine him in some convenient place until the meeting is adjourned; and the person so refusing to withdraw, shall, for such offense, forfeit a sum not exceeding \$10, for the use of the town, to be recovered in an action of debt in the name of the town, before any justice of the peace of the town.² [Laws 1861 p. 224; § 8.]

(1) At a town meeting the balloting was carried on in a room within a house, and a resolution being proposed and drawn up in the presence of the presiding officers, by their direction, the clerk proceeded outside of the building where most of the persons attending the town meeting were, and in the presence of one of the presiding officers, there put the motion, and it was by him or the presiding officer declared carried, and no one made objection. Held, that the resolution was duly passed. *People v. Tabor*, 21 How. (N. Y.) Pr., 42.

Votes of a town at town meeting, unless carried into execution so that individual rights have vested, may be altered or rescinded by subsequent meetings. *Denton v. Jackson*, 2 Johns. Ch. R., 320.

A town meeting cannot properly audit accounts against the town. This duty is conferred on town auditors. *People v. Onondaga*, 16 Mich. R., 254. See Art. XIII., § 4, post.

(2) The order of the moderator to take a person from the meeting for disorderly conduct, need not be in writing, but may be given to the constable, or other person, verbally; but if it is desired to recover the forfeiture or penalty provided for, it will be an independent matter, and must be prosecuted as in other cases of fines or penalties going to the town. *Parsons v. Brainerd*, 17 Wend. R., 522.

The proceedings to collect a fine for disorderly conduct at town meeting the law contemplates shall be conducted like any ordinary suit before a justice of the peace. The process may be the general form of summons prescribed by the statute.

Held, in Massachusetts, an indictable offense to violently and rudely disturb a town meeting. *Commonwealth v. Hoxey*, 16 Mass. R., 385. Or to give in more than a single vote upon one balloting for town officers. *Commonwealth v. Silsbee*, 9 Mass. R., 417; *Walker v. Winn*, 8 Mass. R., 248; *Bradley v. Heath*, 12 Pick. (Mass.) R., 163.

89. Qualification of voters.] § 9. No person shall be allowed to vote or participate in any such meeting unless he shall be a qualified elector of such town.¹ [Laws 1861, p. 214; § 9.]

90. Proceeding with election.] § 10. When the miscellaneous business of that day shall have been transacted, the moderator shall announce the polls of the election open, and the election shall proceed. (1)

(1) This section has been annulled by the effect of the amending Act of May 25, 1889. See § 74, p. 80, ante.]

ARTICLE IX.

QUALIFICATION AND TENURE OF OFFICE.

- 91. Who eligible to office.
- 92. Qualifying.
- 93. Neglect to qualify.
- 94. Poundmaster—Notice of acceptance.
- 95. Collector—Bond.
- 96. Failure of collector to give bond.
- 97. Supervisor, etc., refusing to serve.
- 98. Entering upon office before taking oath.
- 99. Term of office.
- 100. Successor to demand books, etc.
- 101. Demand in case of vacancy.
- 102. Outgoing officer to deliver over.
- 103. Demand of executor, etc.

91. Eligible to office.] § 1. No person shall be eligible to any town office unless he shall be a legal voter, and have been

(1) As to who are qualified electors of the town, the Constitution of Illinois, Art. IV., entitled, "Suffrage," declares:

§ 1. Every person having resided in this State one year, in the county ninety days, and in the election district thirty days next preceding any election therein, who was an elector in this State on the first day of April, in the year of Our Lord one thousand eight hundred and forty-eight, or obtained a certificate of naturalization before any court of record in this State prior to the first day of January, in the year of Our Lord one thousand eight hundred and seventy, or who shall be a male citizen of the United States above the age of twenty-one years, shall be entitled to vote at such election.

§ 2. All votes shall be by ballot.

§ 3. Electors shall, in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at elections, and in going to and returning from the same. And no elector shall be obliged to do military duty on the days of election, except in the time of war or public danger.

§ 4. No elector shall be deemed to have lost his residence in this State by reason of his absence on the business of the United States or of this State, or in the military or naval service of the United States.

§ 5. No soldier, seaman, or marine in the army or navy of the United States, shall be deemed a resident of this State in consequence of being stationed therein.

§ 6. No person shall be elected or appointed to any office in this State, civil

one year a residence of such town.¹ [Laws 1861, p. 226, § 1.

92. Qualifying.] § 2. Every person elected or appointed to the office of supervisor, town clerk, assessor, commissioner of highways or collector, before he enters upon the duties of his office, and within ten days after he shall be notified of his election or appointment, shall take and subscribe, before some justice of the peace or town clerk, the oath or affirmation of office prescribed by the constitution, which shall, within eight days thereafter, be filed in the office of the town clerk.² [Laws 1861, p. 226, § 2, 3.

93. Neglect to qualify.] § 3. If any person elected or appointed to either of the offices above enumerated shall neglect

or military, who is not a citizen of the United States, and who shall not have resided in this State one year next preceding the election or appointment.

§ 7. The General Assembly shall pass laws excluding from the right of suffrage persons convicted of infamous crimes.

See also Div. "Elections," § 65, § 66, post.

(1) Town officers must be inhabitants of the town in which they are chosen, and they cease to be officers when they cease to be inhabitants. *Bane v. Greenwich*, 1 Pick. R., 120.

No person is eligible to a town office unless he has been a resident of the town for one year next preceding the time of his election. Where L., in the year 1860, was a resident of the town of Cicero; in 1861 removed his family to the city of Chicago, adjoining the town; in the same year entered the army, leaving his family in Chicago; in 1864 had a farm and lived in Missouri; in March, 1866, returned to Cicero, and in November was chosen a constable of the town. Held, that his residence could only be counted from March preceding the election; therefore he could not hold the office legally. *Laimbeer v. The People ex rel.*, 48 Ill. R., 490.

The right to an office cannot be determined by an action of replevin of its appurtenances. *Desmond v. McCarthy*, 17 Iowa R., 525.

And an officer de facto is entitled to the possession of his office during the proceedings to oust him from it. *Leach v. Cassidy*, 23 Ind. R., 449.

A town officer can perform no official Act outside of any beyond the territorial limits in which he is authorized and required to act, unless expressly authorized by law. An assessor not being authorized to assess property out of his township, cannot lawfully administer an oath to a person, except in his township in relation to his rights and credits liable to assessment. *Van Duzen v. The People*, 78 Ill. R., 645.

(2) The term "notified" as used in the law, would seem to import a formal notice, and not mere knowledge on the part of the person notified. *Potwine's Appeal*, 51 Conn R., 387.

Form of Oath to Be Taken and Subscribed by Town Officer.

State of Illinois, }
 ——— County, }^{ss.}

I, A. B., do solemnly swear [or affirm, as the case may be] that I will, support the Constitution of the United States and the Constitution of the State of Illinois, and that I will faithfully discharge the duties of the office [here insert the title of the office] according to the best of my ability. A. B.

Taken and subscribed before me this ——— day of ———, A. D. 19—.

C. D., Town Clerk.

The foregoing is the general form of official oath prescribed by the Constitution, Art. V., § 25.

Supervisors are required (see Div. "Counties and County Affairs," § 52, post) to lay before the board of supervisors, at their first meeting after the annual town election, certificates of their election; each supervisor will, therefore, after his qualification, be entitled to a certificate of his election, which should be issued by the town clerk, and may be in the following form:

to take and subscribe such oath, and cause the certificate to be filed as above required, such neglect shall be deemed a refusal to serve. [Laws 1861, p. 227, § 4.]

94. Pound master—Notice of acceptance.] § 4. Every person elected or appointed to the office of pound master, before he enters on the duties of his office, and within ten days after he shall have been notified of his election or appointment, shall cause to be filed in the office of the town clerk a notice signifying his acceptance of such office. A neglect to cause such notice to be filed shall be deemed a refusal to serve.¹ [Laws 1861, p. 227, § 5.]

95. Collector—Bond.] § 5. Every person elected to the office of collector, before he enters upon the duties of his office, shall give the bond required by law.² [Laws 1861, p. 227, § 6.]

Form of Supervisor's Certificate of Election.

— County, }
Town of —, } ss.

I, J. G., Town Clerk of said town of —, do hereby certify that at the election — in said town, on the — day of —, A. D. 19—, W. H. was duly elected supervisor of said town, *or* was, on the — day of —, A. D. 19—, duly appointed, etc.]; that he has been duly qualified as such by taking the oath of office and giving bond as required by law.

In witness whereof I have hereunto set my hand this — day of — A. D. 19—.

J. D., Town Clerk.

(1) *Form of Notice of Acceptance of Overseer of Highways or Pound Master.*

To S. L., Town Clerk of the town of —:

Sir—Having been elected [*or* appointed] overseer of highways for district No. —, in said town [*or* pound master for said town, *as the case may be*], on the — day of —, A. D. 19—, I hereby notify you that I accept the office.

Witness my hand this — day of —, A. D. 19—. C. E.

The failure of a town officer to take and subscribe the oath or affirmation of office within the time prescribed, vacates the office. *State v. Matheney*, 7 Kans. R., 327. But where the question of vacancy is brought in controversey, it is held that the simple fact of failure to take the oath is not sufficient; that it must appear that not taking the oath in time was by the fault or failure of the officer elect. *Ross v. Williamson*, 44 Ga. R., 501; *State v. Falconer*, 44 Ala. R., 696.

(2) For form of collector's bond, and time of executing the same, see Div. "Revenue," § 133, post.

Liability of collectors and sureties. Although the proceedings of a town are very irregular and informal, at a meeting where assessor, treasurer and collector of taxes are elected, and taxes voted to be assessed, yet the collector is legally bound to pay over to the treasurer *de facto* all taxes voluntarily paid to him by the tax payer. *Trescott v. Moan*, 40 Maine R., 347.

The neglect of the proper authorities to compel the collector to promptly account for moneys collected, will not have the effect to release the sureties on his bond. *Readfield v. Shaver*, 50 Maine R., 36.

Where a person was collector of taxes for two successive years, and at the end of the second year proved to be a defaulter, he had a right to appropriate payments

96. **Failure of collector to give bond.]** § 6. If any person elected to the office of collector shall not give such security and take such oath as is required above, within the time limited for that purpose, such neglect shall be deemed a refusal to serve. [Laws 1861, p. 228, § 12.]

97. **Supervisor, etc., refusing to serve.]** § 7. If any person elected to the office of supervisor, town clerk, assessor or commissioner of highways, shall refuse to serve, he shall forfeit to the town the sum of \$25.¹ [Laws 1861, p. 228, § 13.]

98. **Entering upon office before taking oath.]** § 8. If any town officer who is required by law to take the oath of office shall enter upon the duties of his office before he shall have taken such oath, he shall forfeit to the town the sum of \$50. [Laws 1861, p. 228, § 15.]

made by him to the town either year, at the time he made each payment; if he failed so to appropriate them the town might appropriate them as they desired; and if no appropriation was made by either, the law would appropriate such payment to the oldest debts, although the whole deficit is thereby made to fall on the second year. When the sureties of such collector on his official bond are not the same for the second year as the first, in a suit on one of the bonds for an alleged default, it is for the defendant to show what part of the deficit belonged to each year. *Readfield v. Shaver*, 50 Maine, R., 36.

A collector's bond, dated August 15, 1854, and reciting that he was "chosen collector of taxes for the year ensuing," it appearing that he was chosen in 1854, his tax bills bearing date that year, and that he collected that year's taxes, will be deemed to have reference to the municipal year 1854. *Trescott v. Moan*, 40 Maine R., 347.

The sureties on a tax collector's bond are bound although the collector never took the oath of office, if in fact he acted as collector. *Lyndon v. Miller*, 36 Vt. R., 329.

Held, in California, that taxes collected by a tax collector can be recovered from him in a single action, in the name of the people, although a part of them are due to the State and a part to the county. *People v. Love*, 25 Cal. R., 520.

To maintain an action against a collector for money collected by him and not paid over at the time required, no previous demand of him is necessary. *Wentworth v. Gove*, 45 N. Hamp. R., 160.

The section of the revenue law making a town collector's bond a lien against his real estate, (see post, Div. "Revenue," § 134), does not repeal the homestead exemption Act, so far as his bond is concerned. A judgment rendered against a town collector upon his official bond, is like any other judgment, and creates no lien which can be enforced against his homestead, except in the mode pointed out by statute. The homestead right is protected against all liens and sales, and against all modes of conveyance, whether by deed absolute or by mortgage, unless released or disposed of in the mode pointed out in the homestead Act. When the value of the homestead exceeds \$1,000, on paying that to the owner, it may be sold under an execution; and in such contingency a judgment, whether upon the official bond of a collector or otherwise, may be enforced, but it does not create a lien against the homestead of the debtor. *Hume et al. v. Gossett*, 43 Ill. R., 297.

Where a township collector received from the county clerk an official bond, with the proper amount named in it, for him to execute, held this was a sufficient notice of the amount of taxes to be collected by him, and it was his duty to have the bond executed and presented to the proper authority for approval within eight days thereafter, and his failure to do so was properly deemed a refusal to serve, and the town board was justified in refusing a bond afterwards presented and in appointing another person to the office. *Ross v. The People*, 78 Ill. R., 375.

(1) A person who has been chosen or appointed to a town office, and neglects or refuses to serve, whereby he incurs the penalty imposed by law, cannot be again chosen or appointed to such office, or made liable to a second penalty for the second refusal to act. *Haywood v. Wheeler*, 11 Johns. R., 432.

It is held that an action for the penalty imposed will not lie except where the town proceed to a new election. That merely neglecting to file notice of the acceptance with the town clerk is not sufficient; the object of the law being to enforce the performance of the duties, and if the town proceed to a new election, then to exact the penalty. *Winnegar v. Rae*, 1 Cowen R., 258.

99. Term of office.] § 9. Town officers, except as otherwise provided, shall hold their offices for one year, and until others are elected or appointed in their places and are qualified. [Laws 1861, p. 228, § 16.]

100. Successor to demand books, etc.] § 10. Whenever the term of any supervisor, town clerk or commissioner of highways shall expire, and other persons shall be elected or appointed to such office, it shall be the duty of such successor, immediately after he shall have entered upon the duties of the office, to demand of his predecessor all the books and papers under his control, belonging to such office. [Laws 1861, p. 228, § 17.]

101. Demand in case of vacancy.] § 11. Whenever either of the officers above named shall resign, or the office become vacant in any way, and another person shall be elected or appointed in his stead, the person so elected or appointed shall make such demand of his predecessor, or of any person having charge of such books and papers. [Laws 1861, p. 229, § 18.]

102. Outgoing officer to deliver over.] § 12. It shall be the duty of every person so going out of office, whenever thereto required pursuant to the foregoing provisions, to deliver up, on oath, all the records, books and papers in his possession or in his control belonging to the office held by him; which oath may be administered by the officer to whom such delivery shall be made. It shall also be the duty of every supervisor and commissioner of highways, so going out of office, at the same time to pay over to such successor the balance of moneys remaining in his hands as ascertained by the auditors of town accounts.¹ [See Rev. Stat., Crim. Code, § 216. Laws 1861, p. 229, § 19.]

103. Demand of executor, etc.] § 13. Upon the death of any of the officers enumerated, the successor of such officer shall make such demand as above provided of the executors or administrators of such deceased officer; and it shall be the duty of such executors or administrators to deliver up, on the like oath, all records, books and papers in their possession or under their control, belonging to the office, held by their testator or intestate. [Laws 1861, p. 229, § 20.]

(1) *Form of Oath to Be Administered to Town Officer on Going Out of Office.*

You do solemnly swear [or affirm] that you have delivered to A. B. [name of successor in office] all the records, books and papers in your possession or in your control, belonging to the office of *supervisor* for the town of ———, so help you God.

ARTICLE X.

VACANCIES IN TOWN OFFICES AND THE MANNER OF FILLING THEM.

- 104. Board of appointment.
- 105. Vacancy in board of appointment.
- 106. Notice of appointment.
- 107. Resignations.

104. **Board of appointment.]** § 1. Whenever any town shall fail to elect the proper number of town officers to which such town may be entitled by law, or when any person elected to any town office shall fail to qualify, or whenever any vacancy shall happen in any town, from death, resignation, removal from the town, or other cause, it shall be lawful for the justices of the peace of the town, together with the supervisor and town clerk, to fill the vacancy by appointment, by warrant under their hands and seals; and the persons so appointed shall hold their respective offices during the unexpired term of the persons in whose stead they have been appointed, and until others are elected and appointed in their places, and shall have the same powers and be subject to the same duties and penalties as if they had been duly elected or appointed by the electors.¹ [Laws 1861, p. 229, § 1.

(1) *Form of Warrant of Appointment by Justices of the Peace, Supervisor and Town Clerk, to Fill Vacancy.*

To R. H., Esq., of the town of ———, in the county of ———, and State of Illinois, greeting:

Whereas, at the annual meeting of said town, held on the ——— day of April, A. D. 19—, said town neglected to choose a [*here insert the title of the office vacant*], for the current year [*or as the case may be*], whereby said office has become vacant.

Therefore, we, reposing full confidence in your integrity and ability, have appointed and do hereby appoint you a [*here insert the title of the office*], for said town, to hold said office until some other person shall be chosen or appointed in your stead, and you will have the same powers, and be subject to the same duties and penalties as if you had been duly chosen by the electors of said town.

In witness whereof, we have hereunto subscribed our names and affixed our seals, at ———, this ——— day of ———, A. D. 19—.

J. P., Justice of the Peace.	[SEAL.]
S. W., Justice of the Peace.	[SEAL.]
J. C., Supervisor.	[SEAL.]
W. G., Town Clerk.	[SEAL.]

105. Vacancy in board of appointment.] § 2. Whenever a vacancy shall occur, from any cause, in any or either of the offices enumerated in the foregoing section, as composing the board of appointment for the appointing of town officers in case of vacancy, it shall be lawful for the remaining officers of such appointing board to fill any vacancies thus occurring, except in cases of vacancy in the office of justice of the peace or constable.¹ [Laws 1861, p. 229, § 2.]

Where the law required the appointment of a collector of taxes to be in writing, but the appointment was made by parol, and a tax warrant issued to him upon such appointment, held; that although the appointment was irregular, the person thus appointed was an officer de facto, and his acts were valid as to the public and third persons. *Hamlin v. Dingman*, 5 Lans. (N. Y.) R., 61.

One appointed to an office by a person having no authority, and commissioned by a person having no authority, is an officer de facto. *Mallett v. Uncle Sam*, etc., 1 Nev. R., 188; *Sawyer v. Hayden*, 1 Nev. R., 75.

After the appointment of any person to a town office to fill a vacancy, the electors cannot hold a special town meeting and fill such vacancy by election; the person appointed will hold over until the expiration of the time for which his predecessor was elected. *People v. Van Horne*, 18 Wend. R., 515.

Before the board can appoint, a vacancy must in fact exist. The vacancy can not be created by the mere act of the board declaring that a vacancy exists. *Opin. Att'y Gen'l. Colville* (Minn.) May 2, 1867.

Where the proper appointing power in a town meet and determine that there is a vacancy in the office of assessor, by a failure to elect one, and they appoint one who qualifies, his acts in making the assessment as a de facto officer will be good and valid until he is ousted by proper proceedings for that purpose. *People ex rel. v. Lieb*, 85th Ill. R., 484; *Scott*, J. dissenting.

Where a town clerk declared publicly his intention of removing from the town and county, and consulted with the justices of the peace as to the appointment of his successor, and actually thereafter left the town, and his successor was appointed. Held, that the latter was entitled to the office. *Matter of Bagley*, 27 How. (N. Y.) Pr., 151.

No authority exists to appoint a person to an office, such as town assessor, who is not a resident of the town. *Opin. Att'y. Gen'l. Cole*, (Minn.) Vol. 1, 214.

Concerning vacancies in town offices, see Div. "Elections," §§124, 125. The provisions of these sections, it would seem, are intended to apply also to town officers, as well as others, except that the resignation of town officers is to be made to the justices of the peace of the town, as provided by this Act. Art. X., § 4, post.

(1) In regard to vacancy in the office of justice of the peace and constable the Act concerning justices of the peace and constables (see *Haines' Treatise*—new edition, p. 55) enacts:

§ 3. When a vacancy occurs in the office of a justice of the peace or constable by death, resignation, removal from the town or precinct, or other cause, if the unexpired term exceeds one year, his office shall be filled by special election, and it shall be the duty of the town clerk, in counties under township organization, and county clerks, in counties not under township organization, in case of such vacancy, to issue his order to the judges of election of the proper town or precinct, requiring them on a certain day therein named, not less than twenty days from the issuing of such order, to hold an election to fill such vacancy, and at the same time the county clerk shall deliver to such judges three copies of a notice of such election, two of which notices shall be posted up in such town or precinct in the most public places therein. And an election shall be held pursuant to such order, and conducted as other elections. If the unexpired term of his office does not exceed one year, the vacancy shall be filled by appointment by the county board.

Form of Order of Special Election for Justice of the Peace or Constable.

To the Judges of Election of the town of ———, in the county of ———, Illinois:

You are hereby ordered and required to hold a special election to said town on the ——— day of ———, A. D. 19—, for the election of *one justice of the peace* [or constable, as the case may be], to fill a vacancy existing in that office in said town. Herewith are delivered to you three copies of a

106. **Notice of appointment.]** § 3. When any appointment shall be made, as provided in the two preceding sections, the officers making the same shall cause the warrant of appointment to be forthwith filed in the office of the town clerk, who shall immediately give notice to each person appointed.² [Laws 1861, p. 230, § 3.

107. **Resignations.]** § 4. The justices of the peace of a town may, for sufficient cause shown to them, accept the resignation of any town officer of their town, and whenever they shall accept any such resignation, they shall forthwith give such notice thereof to the town clerk of the town, who shall make a minute thereof upon the town records: *Provided*, that in towns having more than two justices of the peace, such resignation may be accepted by any two of them; and in case of the resignation of a justice of the peace or constable, the town clerk shall imme-

notice of such election, two of which should be posted up in said town, in the most public places therein.

Given under my hand, this ——— day of ———, A. D. 19—.

A. B., Town Clerk.

Form of Notice for Special Election of Justice of the Peace or Constable.

SPECIAL ELECTION.

Notice is hereby given that a special election will be held in the town of ———, in the county of ———, and State of Illinois, at ———, on the ——— day of ———, A. D. 19—, for the purpose of electing *one justice of the peace [or constable, as the case may be]*, to fill a vacancy existing in that office in said town, which election will be opened at seven o'clock in the morning, and continue open until five o'clock in the afternoon of that day.

Dated at ———, this ——— day of ———, A. D. 19—.

A. B., Town Clerk.

[Where the township contains more than one precinct, the foregoing order and notice should be given to the inspectors of election in each precinct and the form of the notice be varied so as to be in accord with the facts.]

(2) *Notice to One Appointed to Fill Vacancy.*

To H. R., Esq., of the township of....., in the county of....., and State of Illinois:

You are hereby notified that on the.....day of....., A. D. 19.., J. P., S. W., J. C. and W. G., justices of the peace, supervisor and town clerk of said town, by their warrant of that date, under their hands and seals, appointed you to the office of [*here insert the title of office*] for said town, which warrant has been duly filed in my office.

Given under my hand, this ——— day of ———, A. D. 19—.

W. G., Town Clerk.

diately, upon receiving notice thereof, transmit a copy of such notice to the county clerk.¹ [Laws 1861, p. 230, § 4.]

ARTICLE XI.

THE SUPERVISOR AND HIS DUTIES.

108. Bond.
109. Supervisor to receive and pay out moneys.—Report—Clerk to record same and post notices of town meetings.
110. Supervisor to prosecute for penalties.
111. Supervisor's accounts.
112. His annual settlement.
113. Certificate of his account.
114. Supervisor to attend county board.
115. To lay accounts before town auditors.
116. Penalty.
117. Assistant supervisors.
118. Supervisors in Cook county.
119. Election and qualification of supervisors.
120. When new township created.
121. Repeal.

108. Bond.] § 1. The supervisor, before entering upon the duties of his office, shall give bond to the town, with one or more sureties, in at least double the amount of money which may come into his hands, conditioned for the faithful discharge of his duties as such supervisor, and that he will safely keep and pay

(1) *Form of Resignation of Town Officer.*

To G. B. and G. F., Esqrs., Justices of the Peace of the town of ———, in the county of ———, and State of Illinois:

By reason of [*here state the cause of resignation*] I hereby resign the office of commissioner of highways for said town [*or as the case may be*], and respectfully ask that you may accept my resignation.

J. B.

Dated at ———, this ——— day of ———, A. D. 19—.

We, the undersigned, justices of the peace of the said town of ———, being satisfied of the sufficiency of the cause shown above, do accept of the resignation of the said J. B.

Witness our hands, this ——— day of ———, A. D. 19—.

G. B., }
G. F., } Justices of the Peace.

If the resignation of an officer be not accepted, he remains in office. Bouv. Law Dict., title "Resignation," 4 Dev. N. C. R., 1.

An office may be vacated by abandonment, or resigned by parol, and the existence of a vacancy in either case, will depend upon all the facts and circumstances attending the same. State v. Allen, 21 Ind. R., 516.

Any voluntary act of an officer, which permanently disables him to perform the duties of his office, such as enlistment in the military service of the United States,

over all money entrusted to his keeping, as such supervisor—such bond to be approved by the town clerk and filed in his office with such approval endorsed thereon. Whenever the town clerk shall ascertain that such bond has been forfeited, he shall institute suit against such supervisor. If the clerk shall fail or refuse to institute such suit, any person interested therein may institute the same.¹ [Laws 1861, p. 230, § 1.

will amount to a constructive resignation of his office by abandonment. *State v. Allen*, 21 Ind. R., 516; *Bryan v. Cattell*, 15 Iowa R. (7 With.), 538.

One who has been elected to an office cannot resign it until he has been qualified, and has entered into possession of it. *Miller v. Board of Supervisors*, 25 Cal. R., 93.

A county superintendent of schools addressed and presented to the county court of his county a paper as follows:

"The undersigned hereby tenders his resignation as county superintendent of schools."

This paper was received by the court, and handed to their clerk to be placed on the files of the court, and was by him so filed. This was a virtual acceptance of the resignation, which was not subject to be revoked by the party presenting it. It was not necessary to enter an order upon the records accepting the resignation in form. *Pace v. The People ex rel., etc.*, 50 Ill. R., 432.

Although the resignation of a town officer is tendered to and accepted by the proper authority, he is not relieved from the duties and responsibilities of the office until his successor is appointed or chosen and qualified. *Badger v. United States*, 93 U. S. Rep., 599, (3 Otto R.).

(1) *Form of Supervisor's Bond.*

Know all men by these presents, that we, J. G., A. D. and J. F., of the town of ———, in the county of ———, and State of Illinois, are held and firmly bound unto the said town of ———, in the sum of [*here insert double the amount that may come to his hands*], for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators, and each of them, jointly, severally and firmly, by these presents. Sealed with our seals, and dated this ——— day of ———, A. D. 19—.

The condition of the above obligation is such, that whereas, the above bounden J. G. has been chosen supervisor of the said town of ——— for the current year. Now, therefore, if the said J. G. shall faithfully discharge his duties as such supervisor, and shall safely keep and pay over all money entrusted to his keeping as such supervisor, then the above obligation to be void and of no effect, otherwise to remain in full force and effect.

J. G. [SEAL.]
A. D. [SEAL.]
J. F. [SEAL.]

Form of Clerk's Approval to Be Indorsed on Supervisor's Bond.

I approve the within [*or above*] bond, this ——— day of ———, A. D. 19—. W. M., Town Clerk.

The law provides that all official bonds required by law to be given by any public officer or public employe, shall be acknowledged before some officer authorized by law to take acknowledgment of instruments under seal, which said acknowledgment shall be substantially in the following form:

"The requirement that an official bond be approved by some representative of the government is for the protection of the public, and not the principal or his sureties. . . . No formal acceptance of an official bond is required, in order to justify a recovery upon it against the sureties, nor need there be written evidence of its acceptance and approval. . . . If an official bond is executed and delivered to the proper representative of the government it becomes binding upon the parties signing it, unless disapproved by such representative; and the latter's mere non-action does not deprive the officer of power to act nor relieve the sureties. . . . The fact that a public officer acted and was recognized as such is sufficient evidence of the acceptance of his official bond and of the liability of the sureties for the

109. Supervisor to receive and pay out money—Report—Clerk to record same and post notices of town meetings.] § 2. The supervisor of each town shall receive and pay out all moneys raised therein for defraying town charges, except those raised for the support of highways and bridges, and he shall, on or before the Tuesday next preceding the annual town meeting, prepare and file with the town clerk a full statement of the financial affairs of the town, showing first, the balance (if any) received by him from his predecessor in office, or from any other source; second, the amount of tax levied the preceding year for the payment of town indebtedness and charges; third, the amount collected and paid over to him as supervisor; fourth, the amount

non-performance of the officer's duties. . . . The sureties upon an official bond, conditioned for the faithful performance of his duties, are liable for all duties imposed upon him within the scope of his office, whether required by laws enacted before or after the execution of the bond; and the laws in force when the bond is executed become a part of the contract between the officer, his sureties and the public. 197 Ill. 572.

Form of Certificate of Acknowledgement of Official Bond.

State of Illinois, }
County of ——— } 88.

I, ———, hereby certify that ———, who are each personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and ——— seal, this — day of —, A. D. 19—.

Which acknowledgment shall be deemed and taken as prima facie evidence that the instrument was signed, sealed and acknowledged in the manner therein set forth, and have the same force and effect as evidence in all legal proceedings, as that given to deeds of conveyance of real estate. Laws 1879, p. 162, title "Official Bonds."

The town clerk being required to approve the bond of the supervisor, he would seem to be the proper person to ascertain and fix the amount to be inserted in the bond.

A recovery may be had on a bond given for the benefit of the public, although it has not been approved, as required by law. *People v. Johr*, 22 Mich. R., 461.

The supervisor of a town is not, in the ordinary acceptance of the term, or, in other words, is not for all purposes, the agent of the town, and the town is not liable for his errors in judgment. *Davis v. Kalamazoo*, 1 Mich. (N. P. R.), 16.

Where a supervisor is elected his own successor, and gives a new bond, the sureties are liable on such bond for any amount which appears to have been in the hands of such supervisor belonging to the town, at the end of the preceding official term. *Morley v. Town of Metamora*, 78 Ill. R., 394.

The supervisor occupies the position of a qualified chief executive officer of his town, and when called upon as such officer to issue the bonds of the town, under an alleged election and subscription to a railroad company, he has a right to controvert the legality of the demand and call for a judicial determination of the matter. *The People v. Cline*, 63 Ill. R., 394.

Where, by the statute under which a proceeding is had by a town to raise money for a specific purpose by the issuing of its bonds, the supervisor of the town is directed to pay on such bonds, in payment of the interest thereon, the money received by him from the county treasurer for that purpose; held, he cannot question the legality of the bonds, and has no discretion in that respect. *Ross v. Curtis*, 31 N. Y. R., 606.

In such case he acts as the agent of the town; and, as such agent, he cannot question the authority of his principal. *Id.*

The supervisor of a town has no authority to compromise a claim against the town on his own motion. *The People v. Cline*, 63 Ill. R., 394.

paid out by him, and on what account, including any amount paid out on town indebtedness, specifying the nature and amount of such indebtedness, and the amount paid thereon, how much on principal and how much on interest account ; fifth, the amount and kind of all outstanding indebtedness due and unpaid, and the amount and kind of indebtedness not yet due, and when the same will mature. It shall be the duty of the town clerk to record the same in the record book of the town as soon as filed, and post up a copy of the same at the place of holding the annual town meeting two days before the meeting is held ; and he shall also read aloud such statement to the electors at such meeting. Any supervisor or town clerk who shall willfully neglect to comply with the provisions of this section, shall forfeit and pay to the town the sum of not less than fifty nor more than two hundred dollars, to be sued for and recovered by said town in its corporate name, and appropriated to repairs of highways and bridges therein.¹ [As amended by Act approved March 29, 1875. In force July 1, 1875. Laws 1875, p. 111.

(1) The supervisor, as custodian of the funds of the town, must pay out the same according to law; he is not required, nor permitted, to pay over money in obedience to an illegal vote of the town. Towns have no right to give away money collected of the inhabitants by taxation. *Hooper v. Emery*, 2 Shep. (Maine) R., 375. Township treasurers, under the school law, are held to be insurers of the funds coming to their possession, and nothing can relieve them from their obligation to safely keep and pay over such funds, but the act of God or of the public enemy. *Thompson et al. v. Board of Trustees, etc.*, 30 Ill. R., 99. And such is doubtless the rule in regard to supervisor, as the custodian of the town funds. A township trustee who, by law, was custodian of the town funds, made a contract for the township, whereby he became liable, in his official capacity, to pay a certain sum of money. He afterwards made payment in goods of his own, or by giving credit on account due him personally by the other party, and with his consent, who thereupon released the township. Held, that the fact that the trustee retained a corresponding amount of the township funds applicable to that purpose, did not constitute a conversion of the funds of the township to his private use, or render him liable therefor in a suit on his official bond. *State v. Parker*, 33 Ind. R., 285. The supervisor is authorized to pay out money only on the certificate of the town clerk, countersigned by himself. See post, Art. 13, § 10, Amendment to the Township Act. The person to whom such certificate is issued should endorse his name thereon which may be considered as his receipt for payment of the amount.

Form of Supervisor's Statement of Financial Affairs of the Town.

State of Illinois,
 County,
 Town of

}
} ss.
}

The following is a full statement of the financial affairs of the said town of _____, prepared by A. B., supervisor of said town, for the year ending the _____ day of _____, A. D. 19—:

1st. Amount of balance received from predecessor in office, on hand
 at close of last preceding year.....\$100.00
 Amount received from other sources as follows:
 Amount received from fines due the town..... 50.00

2d. The amount of tax levied the preceding year for payment of
 town indebtedness and charges, is..... 300.00

3d. The amount collected and paid over to the present supervisor by
 the town collector, is..... 100.00

110. Supervisor to prosecute for penalties.] § 3. He shall prosecute in the name of his town or otherwise, as may be necessary, for all penalties or forfeitures given by law to such town, or for its use, and for which no other officer is specially directed to prosecute, except as may be otherwise directed by the town meeting.¹ [Laws 1861, p. 230, § 2.]

The amount collected and paid over to the present supervisor by the county collector, is..... 100.00

Total amount\$650.00

Deduct amount of tax levied preceding year as aforesaid..... 300.00

Leaving total amount received.....\$350.00

4th. The amount paid out by present supervisor, and the account on which the same was paid, including amount paid on town indebtedness, the nature thereof, amount of such indebtedness, and amount paid, showing how much on principal and how much on interest account, is as follows:

Amount paid out on account of fees and compensation of town officers.\$100.00

Amount paid on account of bonded debt for Bond No. 1..... 100.00

Amount paid on account of interest on bonded debt..... 20.00

Total amount paid out.....\$220.00

Balance in hands of supervisor..... 130.00

Total\$350.00

5th. The amount and kind of all outstanding indebtedness of the town, due and unpaid, is as follows:

Amount due on amount audited for building town house.....\$1,000.00

Amount due on compensation of town officers..... 25.00

Total indebtedness due and unpaid.....\$1,025.00

To amount and kind of indebtedness not yet due, and time the same will mature, is as follows:

Bond No. 2 for bridge purposes, due April 1, 1880.....\$ 100.00

Bond No. 3, for bridge purposes, due April 1, 1881..... 100.00

Total indebtedness not yet due.....\$ 200.00

Dated —, this — day of —, A. D. 19—.

A. B., Supervisor.

(1) A supervisor of a town, in discharging his duties as such, acts not in his natural, but his official capacity; and is pro tanto a corporation. He has capacity of suing and being sued so far as his trust is concerned. The right to sue is incident to his office, and passes to his successor. If, in a suit brought by or against a supervisor as such, he fails in his action, execution goes against him personally, and his remedy is against the town. So held in New York. *Janson v. Ostrander*, 1 Cowen R., 670.

Special authority from the electors of a town is not necessary to enable the supervisor to defend a suit against the town, or to take an appeal therein. *Homer v. Town of Polk*, 6 Wis. R., 350.

111. **Supervisor's account.]** § 4. He shall keep a just and true account of the receipts and expenditures of all 'moneys which shall come into his hands by virtue of his office, in a book to be provided for that purpose at the expense of the town; and said book shall be delivered to his successor in office.¹ [Laws 1861, p. 230, § 3.

112. **His annual settlement.]** § 5. On Tuesday preceding the annual town meeting, he shall account to the board of auditors for all moneys received and disbursed by him in his official capacity. [Laws 1861, p. 230, § 4.

113. **Certificate of his account.]** § 6. At every such accounting the justices and town clerk, or a majority of them, shall enter a certificate in the supervisor's official book of accounts, showing the state of his accounts at the date of the certificate.² [Laws 1861, p. 230, § 5.

114. **Supervisor to attend county board.]** § 7. The supervisor of each town, except the supervisors of towns in Cook county, shall attend all meetings of the county board of the county.³ [Laws 1861, p. 231, § 6.

115. **To lay accounts before town auditors.]** § 8. He shall receive all accounts which may be presented to him against the town, and shall lay them before the board of town auditors at or before their next meeting. [Laws 1861, p. 231, § 7.

(1) *Form of Keeping Supervisor's Book.*

M. L., supervisor of the town of ———, in account with said town:
DR. CR.

DATE.		\$	DATE.	No. of Cert.		\$
	To am't rec'd of				By am't paid for	

(2) *Form of Certificate of Justices of the Peace and Town Clerk, to Be Entered in Supervisor's Book Upon Examination of His Accounts.*

——— County, }
Town of ——— } ss.

We, the undersigned, the justices of the peace and town clerk of the said town of ———, do hereby certify that we have this day examined the foregoing account [*the certificate being entered at the close of the account at every such accounting*] of M. L., supervisor of said town, and that we find the same in all respects correct and true, and that there appears at this date to be a balance of ——— dollars and ——— cents in the hands of said supervisor.

Witness our hands, this ——— day of March, A. D., 19—.

W. D., }
H. L., } Justices of the Peace.

F. B., Town Clerk.

(3) In regard to Cook County, the Constitution, Art. X., § 7, provides as follows: "The County affairs of Cook County shall be managed by a board of commissioner of fifteen persons, ten of whom shall be elected from the city of Chicago, and five from the towns outside of said city, in such manner as may be provided by law."

116. Penalty.] § 9. If any supervisor shall refuse, or shall willfully neglect to perform any of the duties of his office contained in the preceding sections of this article, he shall forfeit to the town the sum of \$50, and be disqualified to act as the supervisor of said town. [Laws 1861, p. 231, § 9.]

117. Assistant supervisors.] § 10. Assistant supervisors shall have no power or duties as town officers, but shall be members of the county board of their respective counties, and shall have and enjoy the same powers and rights as other members. [Laws 1861, p. 231, § 10.]

118. Supervisors in Cook county.] § 11. The supervisors of towns in Cook county shall perform the same duties as supervisors of towns in other counties under township organization, except that they shall not be members of the county board, or exercise any of the powers thereof. They shall have the same compensation for their services as is or may be prescribed by law for similar services rendered by other supervisors of towns.

AN ACT to provide for the election of supervisors [except in the County of Cook], to fix their terms of office, and to classify them in the county boards according to their terms. [Approved June 4, 1889. In force July 1, 1889. Laws 1889, p. 109.]

119. Election and qualification of supervisors.

120. When new township created.

121. Repeal.

119. Election and classification of supervisors.] § 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly:* That the supervisors elected at the annual town meetings, in their respective towns in the counties now under township organization, on the first Tuesday of April, 1890, (except in the county of Cook) and in counties which may hereafter adopt township organization, the supervisors elected at the first annual town meetings in such counties thereafter, shall, at the first regular or special meeting of the county boards of such counties thereafter, be divided into two classes, to consist of one-half of the members of such board, as near as may be. The supervisors so to be classified to be selected by lot: *Provided*, that the supervisors of any town having a representation of two or more members shall be separately selected and classified by lot so as to be divided among the two classes as near equally as may be. The first class of supervisors shall serve for the period of one year, and the second class for the period of two years, or until their successors are elected and qualified: *Provided*, that where such county board is constituted of odd numbers, the smaller fraction of such board shall constitute such second class, and thereafter at the expiration of the term of each supervisor his successor shall be elected and serve in such county board for the term of two years,

or until his successor shall have been duly elected and qualified, in the manner now provided by law.

120. When new town created.] § 2. When a new town shall be created in, or added to, any county, which is now or may hereafter be under township organization (except in the county of Cook) or any town in such county shall become entitled to additional representation in the county board thereof, such additional member or members shall be classified by lot in such manner as to maintain the numerical equality of each class as near as may be (having regard to the provisions of section one of this Act), and thereafter the successors of such supervisors shall be elected for the term of two years, or until their successors are duly elected and qualified: *Provided*, that where a new town is created by the union of two or more towns, the terms of the supervisors of the towns so united shall expire at the next annual town meetings thereafter, and the supervisor or supervisors of such consolidated town shall be elected at said town meeting and classified in the county board to serve for the term and in the manner herein provided in the case of new towns.

121. Repeal.] § 3. All Acts or parts of Acts inconsistent with the provisions of this Act are hereby repealed.

ARTICLE XII.

THE TOWN CLERK AND HIS DUTIES.

- 122. Records, etc.—Oaths.
- 123. Records of town meeting.
- 124. Certificates of votes to raise money.
- 125. Certificate of tax required.
- 126. Failure to return certificate.
- 127. Copies—Evidence.

122. Records, etc.—Oaths.] § 1. The town clerk shall have the custody of all records, books and papers of the town, and he shall duly file all certificates or oaths and other papers required by law to be filed in his office. He is authorized to administer oaths and take affidavits in all cases required by law to be administered or taken by town officers.¹ [Laws 1861, p. 231, § 1; Laws 1867, p. 173, § 2; Laws 1869, p. 407, § 1.]

123. Records of town meetings.] § 2. He shall record in

(1) When the town clerk files a paper in his office, he should make an entry thereof upon it, with the date of filing in the following form:

Form of Entry of Filing Paper by Town Clerk.

Filed this ——— day of ———, A. D. 19—.

J. J., Town Clerk.

Where a town clerk is required by law to perform a mere ministerial Act, as the countersigning of bonds issued on a subscription to the stock of a railroad company, it is not his province, when called upon to do the Act, to determine whether the proper steps have been taken to authorize the issuance of the bonds. The law provides another mode in which that question could be properly determined (citing *The People v. Dean*, 3 Wend., 438). *Houston v. The People*, ex rel., etc., 55 Ill. R., 398. This case is not in harmony, however, with the ruling in the case of *The People ex rel. Stine v. The Board of Supervisors of Vermillion County*, 47 Ill. R., 256.

the book of records of his town the minutes of the proceedings of every town meeting held therein, and shall enter in said book every order or direction, and all by-laws, rules and regulations made by any town meeting.¹ [Laws 1861, p. 231, § 2.]

124. Certificates of votes to raise money.] § 3. He shall deliver to the supervisor, before the annual meeting of the county board of the county, in each year, certified copies of all entries of votes for raising money, made since the last annual meeting of the county board.² [Laws 1861, p. 231, § 3.]

125. Certificate of tax required.] § 4. He shall, annually at the time required by law, certify to the county clerk the amount of taxes required to be raised for all town purposes.³

126. Failure to return.] § 5. If any town clerk shall willfully omit to make such return, he shall be fined, for each offense, not exceeding \$10.

127. Copies—Evidence.] § 6. Copies of all papers, duly filed in the office of the town clerk, and transcripts from the town records certified by him, shall be evidence in all courts with like effect as if the originals were produced.⁴ [Laws 1861, p. 231, § 6.]

(1) It is competent for one chosen town clerk to make a record of his own election and qualification. *Briggs v. Murdock*, 13 Pick. R., 305.

The by-laws or ordinances of a town, printed and pasted into the regular record book for containing the same are admissible in evidence, as being duly recorded. *Eubanks v. Town of Ashley*, 36 Ill. R., 177.

(2) *Form of Certificate of Town Clerk to Accompany Book of Entry of Votes for Raising Money, Recorded in Town Book.*

_____ County, }
Town of _____ } ss.

I do hereby certify that the foregoing are true copies of entries of votes of the electors of the town of _____, at town meeting, for raising money made since the last annual meeting of the county board, and recorded in the town record of said town.

Witness my hand this _____ day of _____, A. D. 19—.

W. L., Town Clerk.

(3) See post, Div. "Revenue," § 122.

(4) *Form of Certificate of Town Clerk to Copies of Papers and Records.*

_____ County, }
Town of _____ } ss.

I, J. M., town clerk of said town of _____, do hereby certify that the foregoing [*or within*] is a true and correct copy of the original thereof on file in my office [*or is a true and correct transcript from the original book of records of said town, wherein is contained the entry of records of all such matters.*]

In witness whereof I have hereunto set my hand and seal this _____ day of _____, A. D. 19—.

J. M., Town Clerk. [SEAL.]

See Rev. Stat., "Evidence and Depositions," ch. 51, § 14, 16.

ARTICLE XIII.

THE BOARD OF TOWN AUDITORS.

- 128. Who constitute.
- 129. Absences supplied.
- 130. Semi-annual meeting.
- 131. Auditing accounts.
- 132. Accounts filed with town clerk, etc.
- 133. Accounts verified.
- 134. Certificate of audit—Tax.
- 135. Town charges.
- 136. How taxes raised.
- 137. Duty of Town Clerk—Record.

128. Who constitute.] § 1. In each town the supervisor, town clerk and justices of the peace of the town shall constitute a board of auditors; said board shall consist of no less than three persons, and each person shall cast but one vote.¹ [Laws 1861, p. 232, § 1.

129. Absences Supplied.] § 2. In case of the absence of any or either of the said officers, or their failure to attend any meeting of the board, those attending may associate with them the collector or assessor of the town, or both, in the place of any absentee or absentees, as the case may be, who shall act for the time being as members of such board.² [Laws 1861, p. 232, § 2.

130. Semi-annual meeting.] § 3. Said board of auditors shall meet at the town clerk's office for the purpose of examining and auditing the town accounts, semi-annually, on the Tuesday

(1) Each justice of the peace of the township is a member of the board of town auditors. The number of justices who shall be town auditors of a town is not limited; but the law includes them all, whatever may be the number allowed in the township. Opinion Att'y Gen'l Edsall, Aug. 13, 1873. This is not intended to include police magistrates.

When all the officers forming the board of town auditors have met, a majority of them may decide upon questions coming before them, and their certificate will be valid, although the supervisor has refused to sign it. *Onderdonk v. Supervisor*, 1 Hill R., 195.

The supervisor, town clerk or justice of the peace, although his resignation is tendered to and accepted by the proper authority, continues in office, and is not relieved from his duties and responsibilities as a member of the board of auditors, under the township organization laws of the State of Illinois until his successor is appointed or chosen and qualified. *Badger v. United States*, 93 U. S. 3 Otto R.) 599.

Under the Act concerning Canada thistles, town auditors have authority to appoint commissioners of Canada thistles. See post, "Canada Thistles."

(2) It will be observed that any three of the officers named in the first section of this article may comprise the board of town auditors; if three of these are present, there would seem to be no necessity for associating the collector or assessor in order to constitute a competent board.

next preceding the annual meeting of the county board, and on the Tuesday next preceding the annual town meeting. [Laws 1861, p. 232, § 3.

131. Auditing accounts.] § 4. The board of auditors shall, at the same time and place as stated in section 3, examine the accounts of the supervisor, overseer of the poor (where the town sustains its own poor,) and the commissioners of highways of such town, for all moneys received and disbursed by them, and shall also examine and audit all charges and claims against their town, and the compensation of all town officers, except the compensation of supervisors for county services.¹ [Laws 1861, p. 232, § 1, 5.

132. Accounts filed with town clerk, etc.] § 5. The accounts so audited, and those rejected, if any, shall be delivered, with the certificate of the auditors, or a majority of them, to the town clerk, to be by him kept on file for the inspection of any of the inhabitants of the town. They shall also be produced by the town clerk at the next annual meeting, and shall be there read by him. [Laws 1861, p. 232, § 4.

133. Accounts verified.] § 6. The board of auditors may require any account presented to be verified by affidavit, setting forth that the same is correct and just, and is unpaid, or, if any part thereof has been paid, setting forth how much.² [Laws 1861, p. 232, § 6.

(1) The auditors of town accounts may be compelled by mandamus to audit the amount allowed for damages by taking land for a highway, although the party may have a remedy by action against the town. *Van Vleit ex rel., etc., v. Wilson et al*, 17 Wis. R., 687. And compelled by mandamus to perform any ministerial duty which the law imposes they may be upon them. *Carpenter ex rel., etc., v. Supervisor of Town of Beloit*, 20 Wis. R., 79.

It is held (*Supervisors v. Ottawa*, 12 Ill. R., 480) that the board of supervisors in such counties as have adopted township organization are required to provide for the support of the paupers of the county, and that there is no foundation for a distinction between county and town paupers. The section of this Act, therefore, providing for the account of overseer of the poor, will not apply except in those counties where the town support their own poor.

A judgment against a town is a town charge, and the board of auditors have no discretion or power to refuse to audit a valid judgment against a town. Boards of town auditors have no power to pass in review upon a judgment recovered against a town upon the solemn adjudication of a court. A town cannot in a collateral proceeding go behind the judgment of a court, to question the sufficiency of the cause of the action upon which it was predicated. *Town of Lyons v. Cooledge*, Sup. Ct., Ill., Jan'y, 1879.

(2) *Form of Bill Against Town and Affidavit of Correctness.*
Town of ———.

To. A. J. Dr.

A. D. 19—. March 20. To services as supervisor, one day out of town in attending to prosecution of suit in favor of said town against C. D., pending in the ——— county circuit court, \$2.50

A. J.

State of Illinois }
——— County, } ss.

A. J., being duly sworn, doth depose and say that the foregoing [or an-

134. **Certificate of audit—Tax.]** § 7. The board shall make a certificate, to be signed by a majority of said board, specifying the nature of the claim or demand, and to whom the amount is allowed, and shall cause such certificate to be delivered to the town clerk of said town, to be by him kept on file for the inspection of any of the inhabitants of said town; and the aggregate amount thereof shall be certified to the county clerk at the same time and in the same manner as other amounts required to be raised for town purposes, which shall be levied and collected as other town taxes, except that in towns mentioned in section four (4), article 4, of this Act, the amount shall be certified to the county board, who shall include the same in their estimate of the town expenses.¹ [Laws 1861, p. 232, § 7.

135. **Town charges.]** § 8. The following shall be deemed town charges:

1. The compensation of town officers for services rendered their respective towns.
2. Contingent expenses necessarily incurred for the use and benefit of the township.

nexed] bill for *two* dollars and *fifty* cents by him rendered against the town of ———, in said county for services rendered as therein stated, is correct and just and is unpaid.

Subscribed and sworn before me, this

——— day of ———, A. D. 19—.

J. D., Justice of the Peace.

}

}

Where any part of a bill has previously been allowed and paid, credit therefor should be given on the bill, and the fact stated in the affidavit.

(1) *Form of Certificate of Auditors Allowing Claims Against a Town with Nature of Demand, and to Whom the Amount Is Allowed.*

STATE OF ILLINOIS,

——— County,

Town of ———,

}

ss.

Board of Town Auditors.

We, the undersigned, comprising the board of town auditors of said town of ———, having duly met at the town clerk's office, on the ——— day of ———, A. D. 19—, for the purpose of auditing town accounts, do hereby certify that the following claims or demands against said town were presented, and being examined, were allowed at said meeting, to-wit:

TO WHOM ALLOWED.	NATURE OF CLAIM.	AMOUNT.
Joseph Jenkins,	Compensation as supervisor,	25 00
John Jackson,	Compensation as town clerk,	25 00
James Jones.	Goods for pauper,	10 00

In witness whereof the members of said board of town auditors have hereunto set their hands, this ——— day of ———, A. D. 19—.

(Signed by members, with titles of their office.)

[“There is nothing in the language of this section (§ 7) which can be construed as authorizing the board of auditors to levy township taxes. No such power is given to the board, directly or indirectly. Moreover, § 3 of Art. 4 clearly confers this power on the electors present in the town meeting.” (P. D. & E. Ry. Co. v. People, 141 Ill., 483; also St. L., R. I. & C. Ry. Co. v. People, 147 Ill., 9.) § 2 of Art. 12 makes it the duty of the clerk to keep a record of all proceedings, and of all votes for raising money, and subsequent sections provide for his certification to the county

3. The moneys authorized to be raised by the vote of a town meeting, for any town purpose.¹

4. Every sum directed by law to be raised for any town purpose. [Laws 1861, p. 233, § 8.

136. **How taxes raised.]** § 9. The money necessary to defray the town charges of each town shall be levied on the taxable property in such town in the manner prescribed in the Act for raising revenue and other moneys for State and county purposes and expenses. [Laws 1861, p. 233, § 9.

137. **Duty of township clerk,—record.]** § 10. The town clerk shall act as clerk of the board of town auditors, and shall record the proceedings of each meeting of the board in a book which he shall provide for that purpose at the expense of the town. Such record shall include all certificates of accounts audited by the board. Accounts so audited shall be paid by the supervisor on presentation of a certificate of the town clerk, stating the amount and to whom allowed, the date when audited and on what account; which certificate, before payment of the amount, shall be countersigned by the supervisor." [As amended by Act approved May 29, 1879; in force July 1, 1879. Laws 1879, p. 316.

clerk of the amount levied. "Back of the clerk's certificate must be, of course, a levy of the tax by the proper township authority"—i. e., the town meeting. (141 Ill., supra.) In orderly procedure, the town meeting should pass an appropriation bill, which should contain a clause directing the town clerk to certify the amount to the county clerk, together with the amount of allowed claims certified by the board of auditors.]

Form of Clerk's Certificate to County Clerk of Aggregate Amount of Accounts Audited.

State of Illinois, ——— County, ——— Township, ss:
To the County Clerk of said county:

I, A. B., clerk of said township of ———, do hereby certify that the aggregate amount of accounts audited against said township by the board of auditors thereof, at their meeting held at the town clerk's office on the ——— day of ——— A. D. 19—, is ——— dollars and ——— cents, as appears by the certificate of said board duly delivered to me and remaining on file in my office.

In witness whereof I have hereunto set my hand this ——— day of ———, A. D. 19—. A. B., Township Clerk.

(1) § 3, Art. 4, Township Organization Act, which authorizes the electors in township meeting to raise money by taxation for certain specified purposes, and "for any other purpose required by law," does not authorize the levy of a tax "for town purposes." It must appear that the purpose for which every tax was levied was a purpose authorized by law. 194 Ill., 28.

Form of Township Clerk's Certificate of Claim Audited.

\$———. No.———
State of Illinois, ——— County, ——— Township, ss:
Clerk's Office, ——— A. D. 19—.

This is to certify that the sum of ——— dollars and ——— cents will be paid by the supervisor of said township, to ——— or order, on presentation of this certificate; which amount was allowed to him and audited on

ARTICLE XIV.

[Note. Sections one (1), two (2) and three (3) of Art. XIV of an Act entitled, "An Act to revise the law in relation to township organization," approved and in force March 4, 1874, repealed by Act approved May 10, 1901.]

TOWN AND COUNTY BOARDS OF HEALTH.

AN ACT to establish boards of health in counties not under township organization, and in townships outside of the corporate limits of cities and villages, to prescribe their duties and powers and provide for enforcing the same. Approved May 10, 1901.

138. How constituted—duties of.

139. Powers of board.

140. Penalty—Fines—State's attorney to prosecute.

141. Clerk's records and reports.

142. Compensation.

143. Repeal.

138.—How constituted.] § 1. *Be it enacted by the people of the State of Illinois represented in the General Assembly:* That the board of county commissioners in counties not under township organization, and the supervisor, assessor and town clerk of every town in counties under township organization, shall constitute a board of health, and on the breaking out of any dangerously communicable diseases in their county or town, or in the immediate vicinity thereof, it shall be their duty to make and enforce such rules and regulations tending to check the spread of the disease within the limits of such county or town as may be necessary; and for this purpose they shall have power to quarantine any house or houses or place where any infected person may be, and cause notices of warning to be put thereon, and to require the disinfection of the house or place. *Provided*, that nothing in this Act shall apply to any territory lying within the corporate limits of any incorporated city or village: *Provided, further*, That in case the board of health in any county not under township organization, or of any township in counties under township organization, shall fail, refuse or neglect to promptly take the necessary measures to preserve the public health, or in case any such board of health shall refuse or neglect to carry out the rules and regulations of the State Board of Health, that thereupon the

the — day of —, A. D. 19—, by the auditors of said township, on account of —.

Countersigned.

C. D., Supervisor.

A. B., Township Clerk.

State Board of Health may discharge such duties and collect from the county, or township, as the case may be, the reasonable costs, charges and expenses incurred thereby. [As amended by Act approved May 16, 1903; in force July 1, 1903. Laws 1903, p. 136.

139. Powers of board.] § 2. The said boards of health shall have the following powers:

First—To do all acts, make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease.

Second—To appoint physicians as health officers and prescribe their duties.

Third—To incur the expenses necessary for the performance of the duties and powers enjoined upon the board.

Fourth—To provide gratuitous vaccination and disinfection.

Fifth—To require reports of dangerously communicable diseases.

[As amended by Act approved May 16, 1903; in force July 1, 1903. Laws 1903, p. 136.

140. Penalty—Fines—State's Attorneys to prosecute.] § 3. Any person who shall violate, or refuse to obey, any rule or regulation of the said board of health, shall be liable to a fine not exceeding \$200 for each offense, or imprisonment in the county jail not to exceed six months, or both in the discretion of the court.

All fines under the provisions of this Act shall be paid into the county treasury of the county in which the suit is brought, to be used for county purposes, and it shall be the duty of the state's attorney in the respective counties to prosecute all persons violating, or refusing to obey, the rules of said local boards of health.

141. Clerk's records and reports.] § 4. The clerk of the board of county commissioners, or the town clerk, as the case may be, shall keep a full record of all the doings of said board and report the same to the annual meeting of such board of county commissioners or town board.

142. Compensation.] § 5. The members of said boards of health shall be allowed for the time spent in the performance of their said duties, each, the sum of \$1.50 per day, which, together with all bills by them contracted and all sums of money by them expended, shall be audited and paid in the same manner as other county and town expenses. [As amended by Act approved May 16, 1903. In force July 1, 1903. Laws 1903, p. 137.

143. Repeal.] § 6. Sections one (1), two (2), and three (3) of Article XIV, of an Act entitled, "An Act to revise the law

in relation to township organization," approved and in force March 4, 1874, and all Acts or parts of Acts conflicting herewith are hereby repealed.

ARTICLE XV.

COMPENSATION OF TOWN OFFICERS.

144. FEES—

- (1) Of town clerk and supervisor.
- (2) Of pound master.
- (3) Of board of appointment.
- (4) No fee for administering oath.

145. Emergency.

144. Fees.] § 1. The following township officers shall be entitled to compensation at the following rates for each day necessarily devoted by them to the service of the townships in the duties of their respective offices:

1. The town clerk and supervisor shall receive for their services three dollars per day when attending to town business out of town and two dollars and fifty cents for town business in their town. This additional pay per diem to include the supervisors and assistant supervisors who are residents of the county seat while the board of supervisors are in regular session or engaged in regular committee work: (1) Provided, that the supervisors, when attending to their duties as overseers of the poor, shall be regarded as town officers, and their compensation for services as such overseers of the poor shall be fixed by the town board of auditors and be paid out of the town fund and a tax levy be made to cover same at the annual town meeting. The compensation of the overseer of the poor to be fixed at the annual meeting in March each year: *And, provided, further,* that the town clerk shall receive fees, and not a per diem, for the following services. [As amended by Act approved June 10, 1909. In force July 1, 1909. Laws 1909, p. 470.

For serving notices of election upon township officers, as required by law, twenty-five cents each.

For filing any paper required by law to be filed in his office, ten cents each.

For posting up notices required by law, twenty-five cents each.

For recording any order or instrument of writing authorized by law, eight cents for each one hundred words.

(1) The fees of a supervisor for doing business outside of and in the township for the township is a township charge, with which the county has nothing to do. But the supervisor is entitled to \$2.50 per day, and 5 cents mileage each way for attending the board of supervisors, and this is to be paid out of the county treasury. Opinion Att'y Gen'l Edsall, March 30, 1873.

For copying any record in his office and certifying to the same, eight cents for every one hundred words, to be paid by the person applying for the same.

For copying by-laws for posting or publication, eight cents for each one hundred words, to be paid by the township.

The township assessor shall receive for his services same per diem as before. (See "Revenue," section 2, p. 599, post.)

2. The pound master shall be allowed the following fees for his services, to-wit:

For taking into the pound and discharging therefrom horses, asses, mules and neat cattle, ten cents each; sheep or lambs, three cents each; and swine, large or small, five cents each.

He may also be allowed to receive his reasonable charges for the keeping of such animals. The amount which he shall charge therefor may be regulated by the town meeting.

3. The officers composing the board of appointments in case of vacancy, when they shall meet for that purpose, and the officers composing the board of town auditors, shall each be entitled to one dollar and fifty cents a day for their services.

4. No justice of the peace or town officer shall be entitled to any fee or compensation from any individual elected or appointed to a town office, for administering to him the oath of office.

Each town or district collector shall be allowed a commission of two per cent, on all moneys collected by him, to be paid out of the respective funds collected: *Provided*, that in any case where the compensation so allowed shall be insufficient, the town or county board may allow an additional compensation or per diem in lieu of other or greater commissions, in which case said additional compensation shall be paid out of the town or county treasury, as the case may require: *And, provided, further*, that all excess of commissions and fees over fifteen hundred dollars in counties of the first and second class and over three thousand dollars in counties of the third class shall be paid into the town or district treasury: *Provided, however*, that the town board of auditors of any town may, prior to the election of a town collector, fix the maximum amount at a lesser sum than provided herein. [As amended by Act approved June 7, 1911. In force July 1, 1911. Laws 1911, p. 338, "Fees and Salaries."

145. **Emergency.] § 2.** Whereas the constitution requires that the day of holding the annual township meeting shall be uniform throughout the state; and whereas, in the county of Cook, the day of election, as fixed by law, is not the same as that in the majority of the counties in this state, and there is doubt whether any election can legally be held in such county for town officers, an

emergency exists that this act shall take immediate effect: therefore this act shall take effect and be in force from and after its passage.

146, 147, 148 and 149. Repealed.] See Laws 1913, p. 581; "Roads and Bridges." § 169, post.

REFUNDING SURPLUS FUNDS.

AN ACT making provision for the refunding of surplus funds that are, or hereafter may be, in the hands of the county collectors of taxes or county treasurers to the credit of the bond fund of townships when such bonds have been fully paid and canceled. [Approved and in force March 29, 1889. Laws 1889, p. 357.]

150. Surplus of bond funds to be refunded to township.

151. When such funds paid, how may be appropriated by town.

152. On vote, such surplus funds may be turned over to commissioners of highways.

153. Emergency.

150. Surplus of bond funds to be refunded to township.]

§ 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That whenever all the bonds of any township shall have been fully paid and canceled, and there remains in the hands of the county collector of taxes or county treasurer, after said payment, any balance to the credit of the bond fund of such township, it shall be the duty of any such county collector of taxes or county treasurer, and he is hereby authorized to pay to the supervisor of such township the balance of such fund in his hands, taking a receipt of such supervisor therefor.

151. When such funds paid, how may be appropriated by town.] § 2. Such funds, when paid to the supervisor of any such town, may be appropriated and expended for defraying the general charges and expense of such town, for laying out, making and repairing the roads and bridges of said town, the purchase of materials, implements and machinery therefor, and for the payment of any outstanding orders, in such manner and proportions as the legal voters of such town may determine at their annual or special town meeting duly called for such purpose.

152. On vote, such surplus funds may be turned over to commissioners of highways.] § 3. Whenever the legal voters of any town, obtaining or receiving surplus funds as mentioned in section one of this Act, shall determine at any general or special town meeting that a particular amount or portion of such surplus fund shall be paid to the commissioners of highways of such town for road and bridge purposes, as provided in section two of this Act, it shall be the duty of the supervisor of such town to pay such amount to the road commissioners of such town and to take their receipt therefor. [See ¶ 40, Art. IV, § 3, subdivis. 15, p. 62, ante.

153. Emergency.] § 4. Whereas, large sums of money are now idle in many of the county treasuries of this State, credited to the bond fund of certain townships which ought to be paid back to the townships to whose credit the same stands, and there is at present no provision of law for such payment, therefore, an emergency exists, and this Act shall take effect and be in force from and after its passage.

CITIES ORGANIZED AS TOWNS.

AN ACT to authorize County Boards in Counties under Township organization to organize territory situated therein as a Town. [Approved May 23, 1877. In force July 1, 1877. Laws 1877, p. 212.]

- 154. Territory of City organized as Town.
- 155. Town in city.
- 155a. Election of officers.
- 156. Powers exercised by council.
- 157. What city council may provide.
- 158. May regulate the number of justices.
- 159. Vacancies.

154. Territory of city organized as town.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That the County Board, in any county under township organization, may provide that the territory embraced within any city in such county shall be organized as a town: provided, such territory shall have a population of not less than three thousand; and, provided, the city council in such city shall by resolution, request such action by the County Board. *And, provided further,* that whenever the territory of any city of a population of not less than fifteen thousand shall be composed of portions of two or more townships, and shall by its council request, by resolution, the County Board to organize it into a separate township, as aforesaid, and shall designate the name thereof, it shall be the duty of the County Board to comply with such request and provide for such organization of said city into a new township under the name designated in such resolution of said city council. [As amended by Act approved May 15, 1903. In force July 1, 1903. Laws 1903, p. 352.]

155. Town in city.] § 2. The territory of any city now organized, within the limits of any county under township organization, and not situated within any town, shall be deemed to be a town.

155a. Election of officers.] § 3. All town officers within any town organized as aforesaid shall be elected at the annual charter election of said city. All general elections held in such city and town, shall be held at the same voting places as the city elections, with judges and clerks appointed in like manner as for the city elections.

156. Powers to be exercised by council.] § 4. All the powers vested in such towns, including all the powers now vested by law in the Highway Commissioners of such town, shall be exercised by the city council, except the appointment of poor master. [As amended by Act approved May 17, 1907. In force July 1, 1907. Laws 1907, p. 571.]

157. What the city council may provide.] § 5. The city council in such city and town may, by ordinance, provide that the officers of city and town clerk shall be united in the same person; that the officers of city treasury and town collector shall be united in the same person; that the office and election of highway commissioners shall be discontinued. The poor master in such city and town shall be appointed by the county board. [As amended by Act approved May 17, 1907. In force July 1, 1907. Laws 1907, p. 571.]

158. May regulate the number of justices.] § 6. The city council in such city and town may from time to time regulate the number of justices of the peace, police magistrates and constables to be elected within such city and town; but the number elected to either of such offices shall not exceed the number allowed by law to other towns of like population.

159. Vacancies.] § 7. Vacancies in any of the town offices within such city and town may be filled by the city council.

PURCHASE OR LEASE OF TOWN HALLS.

AN ACT in relation to town halls. [Approved May 13, 1905. In force July 1, 1905. Laws 1905, p. 397.]

160. When town hall to be built, etc.—Notice.

160. When town hall to be built—Notice.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That whenever it is desired to build, purchase or lease, for a longer period than five years, a Town Hall, in any town in counties under township organization in this State, at least twenty-five electors of such town shall, before the time of giving notice of the annual town meeting, file with the town clerk a request in writing that notice be given that the question of building, purchasing or leasing of a town hall, as the case may be, will be brought up in such town meeting, and in such case it shall be the duty of the town clerk to include a notice of such request in the notice for such annual town meeting.

TOWN HALLS IN TOWNS CO-EXTENSIVE WITH CITIES.

AN ACT to enable towns, the boundaries of which are co-extensive with cities, to build or purchase a town hall, and a site for the same, to levy a tax and to issue bonds therefor. [Approved April 22, 1907. In force July 1, 1907. Laws 1907, p. 572.]

- 161. Petition—Submission of proposition to build or purchase town hall
—Bonds—Special election.
- 162. Sale of bonds—Tax.
- 163. Purchase of real estate.

161. **Petition—Form of proposition—Election—Amount and denomination of bonds.] § 1.** *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That whenever it is desired to build or purchase a town hall in any town in counties under township organization in this State, the boundaries of which are co-extensive with the limits of an incorporated city, twenty-five electors of such town may, before the time of giving notice of the annual town meeting, file with the town clerk a petition in writing that the proposition of building or purchasing of a town hall, as the case may be, and the issuing of bonds therefor, be submitted to the voters of such town at the next ensuing general election, which proposition shall be clearly stated in the petition substantially as follows: "To borrow \$. to build or purchase (as the case may be) a town hall, and to issue bonds therefor," and thereupon such petition shall be filed in the office of the town clerk of such town. Upon the filing of said petition above specified, it shall be the duty of the town clerk to submit said proposition to the legal voters of said town at the next ensuing general election. Said vote shall be by ballot, upon which shall be written or printed: "For borrowing \$. to (here insert build or purchase) a town hall, and to issue bonds therefor," or "Against borrowing \$. to (here insert build or purchase) a town hall, and to issue bonds therefor," and if a majority of the votes at such election on that question shall be "For borrowing \$. to (build or purchase as the case may be) a town hall, and to issue bonds therefor," such town shall be authorized to issue such bonds in denominations of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00) each, payable respectively in not less than one, nor more than twenty years, with interest payable annually of not more than six per centum per annum. The amount of the bonds so issued shall not exceed two per centum on the value of such taxable

property of such town as ascertained by the assessment for the state and county tax for the preceding year, nor shall the amount of the said bonds exceed, including the then existing indebtedness of such town, five per centum on the value of such taxable property of such town as ascertained by the assessment for the State and county tax for the preceding year. The above question may be submitted to the voters of any such town at a special election in the following manner: The city council of the city whose territory is co-extensive with such town, may direct by ordinance that the question of "Borrowing \$. to build or purchase (as the case may be) a town hall and issue bonds therefor," be submitted to popular vote at a special election to be held at least thirty (30) days after the passage of such ordinance. The city clerk shall thereupon certify the passage of such ordinance to the town clerk, whereupon it shall be the duty of the town clerk to submit said proposition to popular vote in the manner above set forth. Said town clerk shall give at least thirty (30) days' notice of such election by publishing a notice thereof in one or more newspapers of general circulation within such city. If a majority of the votes at such special election cast on that question shall be "For borrowing \$. to (build or purchase, as the case may be) a town hall and to issue bonds therefor," such town shall be authorized to issue such bonds and proceed in the same manner as above provided if the same had been a general election.

162. Sale of bonds—Levy and collection of annual tax.]

§ 2. If it shall appear that a majority of the legal voters voting on said proposition shall be in favor of said proposition the supervisor and town clerk shall issue a sufficient amount, in the aggregate, of the bonds of said town for the purpose of building or purchasing, as the case may be, of such town hall, not to exceed the amount so voted upon as aforesaid: *Provided*, that said bonds shall not be sold or disposed of for less than their par value, and the city council of the city, whose territory is co-extensive with such town, shall provide for the collection of a direct annual tax sufficient to pay the interest on such debt as it falls due, and also to pay and discharge the principal thereof within twenty (20) years from the time of contracting the same, the amount of which tax shall be certified to the county clerk by the town clerk annually at the time required by law, and shall be by the county clerk extended against the taxable property of such town, as other taxes, and shall be collected at the same time, and in the same manner as other taxes are collected, and when so collected shall be held by the town collector as a fund out of which

shall be paid the said bonds and the interest thereof, according to the tenor and effect thereof upon the order of the supervisor and town clerk.

163. Purchase of Real Estate.] § 3. The building or purchasing of a town hall, as used in this Act, shall be held to mean and include the purchasing of real estate upon which to build the same, or upon which the same is situated, as well as to build or purchase said town hall.

CANADA THISTLES.

AN ACT concerning Canada thistles. [Approved and in force March 15, 1872. Laws 1871-2, p. 210. Revised Stat., chap. 18.]

1. Commissioner of Canada thistles.
2. Duties of commissioner.
3. Treatment of thistles on enclosed lands—Appeal, etc.
4. Further treatment.
5. Prosecutions.
6. Report of commissioner.
7. Accounts audited.
8. Appropriations—Control by county board.
9. County board appoint commissioner—Penalty.
10. Emergency.

1. Commissioner of Canada thistles.] § 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly:* That there may be appointed by the board of town auditors in counties under township organization, and by the county commissioners in counties not under township organization, for each township or election precinct, and by the city council of any city, or by the president and trustees of any town or village, as the case may be, some competent person, to be styled "Commissioner of Canada Thistles," who shall take the oath required of township or precinct officers, and shall hold his office for the term of three years, and until his successor is appointed and qualified; and he shall receive for his compensation the sum of two dollars a day, for each full day necessarily spent in the performance of his duty, to be verified by affidavit. The board of appointment may, at any time, for good cause, remove the commissioner from office, and appoint his successor, to serve the remaining portion of his time.

2. Duties of Commissioner.] § 2. The commissioner of Canada thistles shall diligently inquire concerning the introduction and existence of Canada thistles in his township or precinct, and if any are found growing therein he shall take charge of all such growing in the highway and on uninclosed lands, and take care that they

do not go to seed, or otherwise spread; and he shall carefully seek and learn, so far as practicable, the best methods for their destruction, and he shall persistently apply, in proper time, such remedy or treatment as he shall deem best calculated to prevent their spread and to eradicate the same.

3. Treatment of thistles on inclosed lands—Appeal, etc.]

§ 3. In case said thistles are found growing on inclosed lands, the commissioner shall advise with the owner, agent or occupant on their treatment, and if the said commissioner shall deem it necessary and expedient for him to fully control the same, he shall agree with the owner, agent or occupant on the boundaries of the tract so infected, which it is expedient for him to control, and he shall mark the same by stakes, or by fence if thought best; and thereafter such infected tract, or so much as from time to time remains infected, shall be managed and controlled by the said commissioner, for the purpose of destroying said thistles, and so long as it may be necessary to complete the work. In case the commissioner and the owner, agent or occupant of said land cannot agree as regards the propriety of the commissioner controlling such tract or of the boundaries of the same, then the commissioner shall proceed to stake out or mark such boundaries, as he deems proper, and file a copy of his decision with the town clerk, or in counties not under township organization, with the county clerk. The owner, agent or occupant of the land may, if he feels aggrieved, appeal from such decision of the commissioner without bonds, within twenty days, to the commissioners of highways of the town, or to the county commissioners, as the case may be, who shall proceed to view the same, and to hear the reasons for and against the decision of the commissioner, and a majority of such board of appeal shall decide as to the propriety of taking possession of the tract alleged to be infected, and if they decide to take such possession, what shall constitute the boundaries of the same, and shall direct said commissioner to exterminate said thistles, (which are hereby declared a public nuisance) without unnecessarily depriving the owner of the land of any legitimate use and enjoyment of the same, (1) and the owner or occupant of said land shall pay all cost

(1) *Appeal from Decision of Commissioner of Canada Thistles.*

To I. B., I. J. and D. I., Commissioners of Highways of the Town of ———,
in the County of ——— [or County Commissioners, as the case may be.]

The undersigned, A. B., owner [or agent, or occupant, as the case may be] of the hereinafter described premises, feeling himself aggrieved by the decision of the commissioner of Canada thistles, filed with the town clerk [or with the county clerk, as the case may be], on the ——— day of ———, A. D. 19—, does hereby appeal to and submit the matter in controversy to

and expense of labor for said extermination, which shall not exceed the sum of one hundred dollars, for each infected tract in one year, without the consent of the supervisor of said town or county commissioners, as the case may be, and that the sum so expended shall be a lien upon said tract so infected, and if the owner or occupant shall not pay the same to said commissioner on or before the first Monday of September of the year the work was performed by the commissioner on said tract, the commissioner shall report the same to the board of town auditors, in towns under township organization, or county commissioners, as the case may be, and certify to the same, and that said board of town auditors or county commissioners shall certify to the county clerk the amount so due on each tract, and it shall be the duty of the county clerk to cause the amount so returned to be levied on the lands as certified by said board of auditors or commissioners, as the case may be, and that said amount so certified, shall be collected in the same manner that taxes of the county are levied and collected, and the same when collected, to be paid over to the supervisor of the towns or towns under township organization, and to the county commissioner, as the case may be, who shall pay the same out on the order of the commissioner to the parties entitled to the same, for the labor employed in destroying the thistles on each tract for which the money was collected. [As amended by Act approved June 27, 1885. In force July 1, 1885. Laws 1885, p. 55.]

4. Further treatment.] § 4. The commissioner shall apply the best known means, and use the utmost diligence, in eradicating the thistles; but he shall not have power to expend in work or materials more than \$100 on any one infected tract, without the advice and consent, in writing, of the supervisor of the town, or of the county commissioners, as the case may be.

5. Prosecutions.] § 5. It shall be the duty of the commissioner to prosecute or complain to the proper authorities of any person or corporation who may violate any law now existing, or which may hereafter be passed, on the subject of Canada thistles. [See Revised Stat., Crim. Code, chap. 38, § 40, 41.]

your honorable body according to the statute in such case made and provided.

The grounds upon which this appeal is made are [*here briefly state the grounds of appeal and description of land.*]

Dated this —— day of ——, A. D. 19—

6. Report of commissioner.] § 6. The commissioner shall, annually, before the first day of November, make a written report to the supervisor of the town, or to the county commissioners, as the case may be—which report shall be filed with the town clerk, or in counties not under township organization, with the county clerk. The report made to the supervisor shall be publicly read at the annual town meeting. Said report shall state—

First—Whether there are or not any Canada thistles growing in the town or precinct.

Second—If any are growing, where and how many, and when and how introduced.

Third—A detailed statement of his treatment of each infected tract, with cost and result.

Fourth—He shall report such other matters as may be required of him by the board of town auditors, or by the county commissioners.

Fifth—He shall state his views on their further treatment, and make such suggestions and recommendations as he may deem proper and useful.

And he shall also forward a copy of said report to the secretary of the state board of agriculture, who shall collate and report the same to the Governor by the first day of December of each year.¹

7. Accounts audited.] § 7. The board of town auditors, and the county commissioners in counties not under township organization, shall audit the accounts of the commissioner, both for his services and for the money expended or labor employed by him; and they shall provide for their payment as they now do for other town or county expenses.

8. Appropriations—Control by county board.] § 8. The boards of supervisors and county commissioners may make appropriations from the county treasury to aid in destroying the Canada thistle in any one or more towns or precincts of the

(1) *Form of Report of the Commissioner of Canada Thistles*

To A. B., Supervisor of the Town of ———, in the County of ——— [or to the county Commissioners, *as the case may be*].

The undersigned, commissioners of Canada thistles for the town of ———, said county, would report that said thistles are now growing in said town [*as the case may be*] on the farm of J. D. [*describe its location*], and that the same were introduced about ——— by ———; that his treatment of each infected tract of land, with the cost and result, has been as follows [*state particulars*:] and that he believes said thistles should be treated for *another year*

and said compensation shall be audited and allowed, and paid by the township for which he was appointed, the same as if he had been appointed by the board of auditors of said town; and his duties shall be the same, and the board of town auditors or county board may appoint so many assistant commissioners as they may deem necessary to thoroughly perform the duties in any town; which assistants shall receive the same compensation for like services, as the commissioner, and whose duties shall be the same, and the commissioner of Canada thistles or assistant refusing or neglecting to perform their respective duties shall be fined in a sum not less than ten dollars nor more than one hundred dollars for each offence, such fine to be sued for in any court of competent jurisdiction in the name of the town on complaint of any land owner of the town; said fine when collected to be paid to the supervisor or county commissioner and become a part of the town or precinct fund. [Added by Act approved June 27, 1885. In force July 1, 1885. Laws 1885, p. 55.]

10. Emergency.] § 9. Whereas, Canada thistles are now growing in various parts of the State, requiring attention before the first day of July; therefore, this Act shall take effect and be in force from and after its passage.

PUBLICATION OF ANNUAL STATEMENTS.

AN ACT to require officers having in their custody public funds, to prepare and publish an Annual Statement of the receipt and disbursement of such funds. [Approved May 30, 1881. In force July 1, 1881. Laws 1881, p. 124].

1. Officers to publish annual statements.
2. Penalty.

1. Officers to publish annual statements.] § 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly:* That each and every public officer, elected or appointed, of each and every county and township in this State, who shall, by virtue of his or her office, have the custody of public funds, shall, at the expiration of each fiscal year, prepare a statement of the amount of public funds received and expended by him or her during the fiscal year just closed; which statement shall show the amount of public funds received and from what sources received, and the amount of public funds expended, and for what purposes expended; and such official shall also procure and exhibit to the township, or county board or to the proper official or officials, as the case may be, whose duty it is to audit such annual statement a certificate from the

cashier of the bank or banks in which such funds are deposited, showing the balance to the credit of the official making the statement, and if such funds are in the hands of the said official the money shall be counted by those whose duty it is to audit the same, and the officer making such statement shall subscribe and swear to the same before some person authorized to administer oaths; and such officer shall, within thirty days after the close of each fiscal year, cause such statement to be published in some newspaper published in the county in which such officer holds his or her office, for one week; and if no newspaper is published in such county, then such officer shall make three (3) written copies of such statement and post them in three (3) of the most public places nearest to the location of his or her office; and such officer shall, within thirty days after the close of each fiscal year, file a copy of said statement, so subscribed and sworn to, in the office of the county clerk of the county in which such officer holds his or her office: *Provided*, that the provisions of this Act requiring publication of the annual financial statement in some newspaper, shall not apply to sheriffs, circuit clerks, county clerks, county recorders, county superintendents of schools, county treasurers, county collectors, and township collectors in counties under township organization: *And, provided, further*, that the cost for the publication of said statement shall not exceed the sum of one dollar per hundred words, to be paid out of the funds in the hands of the officer making such statement: *And, provided, further*, that said public officer shall not be required to have said statement published if he shall be unable to procure such publication at the price allowed by this Act. (As amended by Act approved May 27, 1911. In force July 1, 1911. Laws 1911, p. 428.

2. Penalty.] § 2. Any public officer of any county or township in this State, who, by virtue of his or her office, shall have the custody of public funds, and who shall refuse or neglect to comply with the provisions of the first section of this Act, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than fifty dollars (\$50), nor more than five hundred dollars (\$500), at the discretion of the court, which fine shall be paid into the treasury of the county or township in which the officer convicted of said misdemeanor shall hold his or her office; and it shall be the duty of the State's Attorney for the county in which said misdemeanor is committed, to bring suit against any public officer charged with the violation of the provisions of this Act in any court having jurisdiction.

DIVISION II.

ROADS AND BRIDGES.

AN ACT to revise the law in relation to roads and bridges. [Approved June 27, 1913. In force July 1, 1913. Laws 1913, p. 520.]

SECTION 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That the laws relating to roads and bridges be and they hereby are codified, revised and amended, with articles, subdivisions, and sections entitled, numbered and to read as follows:

ARTICLE I.

DEFINITIONS.

1. (a) State road and bridge fund.
- (b) State aid road.

1. **State road and bridge fund.]** § 1 (a). That the term "State Road and Bridge Fund," when used herein, shall mean all moneys appropriated by the State of Illinois for road and bridge purposes.

(b) **STATE AID ROADS.]** The term "State Aid Roads" herein shall mean all roads or bridges constructed, repaired or improved at the joint expense of the State and any county or counties within the State as hereinafter specified.

ARTICLE II.

STATE HIGHWAY DEPARTMENT.

2. State highway department.
 - (a) Established.
 - (b) Offices.
3. State highway commission.
 - (a) Office created.
 - (b) Oath—bond.
 - (c) Salary—expenses.
 - (d) General powers and duties.
4. State highway engineer.
 - (a) Appointment.
 - (b) Oath—bond.
 - (c) Powers and duties.
5. Civil service.
6. Removal from office—vacancy.
7. Duties of present state highway commission terminated.

2. **State highway department—(A) Established.]** § 2. There is hereby created a department, to be known as the State Highway Department, the officers of which shall consist of the members of the State Highway Commission, the Chief State High-

way Engineer, the Assistant State Highway Engineer and the various subordinate officers hereinafter specified and set forth.

(B) OFFICES.] The Secretary of State shall provide for the State Highway Department suitably furnished offices in the capitol building at Springfield and shall provide therefor suitable blanks, stationery, printed matter and other office supplies.

3. State highway commission—(A) Office created.] § 3. The Governor shall, by and with the advice and consent of the Senate, within thirty days after this Act shall take effect, appoint three State highway commissioners (no more than two of said persons shall belong to or be affiliated with the same political party, nor shall they be actively engaged in any other business, occupation or profession, but shall devote all their time to the work of said commission), to hold office one for two years, one for four years and one for six years, from and after the date of their appointment and qualification and until their respective successors are appointed and qualified, and they shall constitute and be known as the "State Highway Commission." And on the first day of March, 1916, and at the end of every two years thereafter, the Governor shall, in like manner and by and with the advice and consent of the Senate, appoint one person as the successor of the commissioner whose term shall have then expired, to serve as such commissioner for the term of six years and until his successor is appointed and qualified. One person appointed on the board shall be, and shall be designated in the appointment, the president, who shall be the executive officer of the board. Two of said commissioners shall constitute a quorum.

(B) OATH—BOND.] The members of the said State Highway Commission before entering upon the duties of their office, shall take the oath prescribed by the Constitution of this State for State officers, and said oath shall be filed in the office of the Secretary of State. They shall also execute a good and sufficient bond to the State in the sum of not less than \$10,000.00 each, conditioned upon the faithful performance of their duties, said bond to be approved by the Governor, and then filed with the Secretary of State.

(C) SALARY—EXPENSES.] The said State Highway Commissioners shall each receive an annual salary of three thousand five hundred dollars (\$3,500.00), and in addition thereto they shall be allowed their actual and necessary traveling expenses incurred in attending to official business. Said commissioners may also incur necessary expenses for clerk hire and other incidental expenses, proper and necessary for the carrying out the provisions of this Act, as well as for the general purposes hereinafter indicated.

(D) GENERAL POWERS AND DUTIES.] The commission provided for herein shall:

(1) Have general supervision of highways and bridges which are constructed, improved or maintained in whole or in part by the aid of State moneys.

(2) Prescribe rules and regulations not inconsistent with law, fixing the duties of all persons employed in the State Highway Department and the various county superintendents of highways. Such rules and regulations shall, before taking effect, be printed and transmitted to the highway officials affected thereby.

(3) Aid county superintendents of highways and town and district commissioners of highways in establishing grades, preparing suitable systems of drainage and advise them as to the construction, improvement and maintenance of highways and bridges.

(4) Employ such clerical and other assistants as they may deem necessary to properly carry on the work of their office.

(5) Cause plans, specifications and estimates to be prepared for the repair and improvement of highways and the construction and repair of bridges when requested so to do by a county superintendent of highways or by a highway commissioner of any town or road district therein.

(6) Investigate and determine upon the various methods of road and bridge construction adapted to different sections of the State and as to the best methods of construction and maintenance of highways and bridges.

(7) Compile statistics relating to public highways throughout the State and collect such information in regard thereto as they shall deem expedient.

(8) Aid at all times in promoting highway improvement throughout the State and perform such other duties and have such other powers in respect to highways and bridges as may be imposed or conferred upon them by law.

(9) Approve and determine the final plans, specifications and estimates for all State aid roads upon the receipt of the report of the plans, specifications and estimates of the State Highway Engineer as provided herein.

(10) Let all contracts for the construction or improvement of State aid roads.

(11) Prescribe a system of auditing and accounting for all road and bridge moneys for the use of all highway officials, which system shall be as nearly uniform as practically possible.

(12) Perform all other duties prescribed in this Act or reasonably inferable therefrom.

4. State highway engineer—(A) Appointment.] § 4. As soon as practicable after the taking effect of this Act, the Governor shall appoint a Chief State Highway Engineer and an assistant State highway engineer who shall each be competent civil engineers,

and experienced and skillful in highway construction and maintenance. The said chief State Highway Engineer shall receive a salary of four thousand dollars (\$4,000) per annum, and the assistant chief State highway engineer shall receive a salary of twenty-five hundred dollars (\$2,500) per annum, and, in addition thereto, they shall be allowed their actual traveling and other expenses incurred under the provisions of this Act. They shall each hold office for the period of six years and until their respective successors are appointed and qualified.

(B)—OATH—BOND.] Said Chief State Highway Engineer and his assistant, before entering upon the duties of their respective offices, shall each take the oath prescribed by the Constitution of this State for State officers and said oath shall be filed in the office of the Secretary of State.

If demanded by the Governor, the said Chief State Highway Engineer and his assistant shall be required to execute a good and sufficient bond in such sum as the Governor shall prescribe, conditioned upon the faithful performance of their duties, said bond to be approved by the Governor and then filed with the Secretary of State.

(C) POWERS AND DUTIES.] The said Chief State Highway Engineer and the said assistant State highway engineer shall be the administrative and technical agents of the State Highway Commission, and shall be generally subject to the orders of the said State Highway Commission. The said Chief State Highway Engineer and the assistant aforesaid may at all reasonable times be consulted by county, township or road district officers having authority over roads and bridges relative to any question involving such highways and bridges.

Civil service.] § 5. With the exception of the State Highway Commission, the Chief State Highway Engineer and the assistant State highway engineer, the appointment of all assistant agents or clerks or other employees of the State Highway Department shall be subject to the laws of this State relating to the civil service.

6. Removal from office—Vacancy.] § 6. The Governor shall have the power to remove the State Highway Commission, the State Highway Engineer and the assistant State highway engineer from their respective offices for incompetency, neglect of duty or malfeasance in office. In case of a vacancy in either of said offices the said vacancy shall be filled by appointment by the Governor by and with the advice and consent of the Senate. When the Senate is not in session, the Governor may make an appointment to fill a vacancy, but any appointment made when the Senate is not in ses-

sion shall be subject to confirmation by the Senate at its next session before becoming permanent.

7. Duties of present state highway commission terminated.]

§ 7. Upon the appointment of a State Highway Commission, under the provisions of this Act, the present State Highway Commission shall terminate and the members thereof shall turn over all books, maps, papers, plans and other things pertaining to their office to the State Highway Commission herein provided for.

ARTICLE III.

COUNTY SUPERINTENDENTS OF HIGHWAYS.

8. County superintendents of highways.

- (a) Appointment.
- (b) Term of office—salary.
- (c) Removal.
- (d) Powers and duties.
- (e) Vacancy.

8. County superintendents of highways—(A) Appointment.] § 8. In each and every county of the State there shall be a county superintendent of highways to be appointed in the manner following: Within ninety days after this Act shall become effective, the county board of each county shall submit to the State Highway Commission a list of from three to five persons, residents of the county, considered desirable candidates for the office of county superintendent of highways. The State commission shall thereupon determine by competitive examination from among the names submitted, the person or persons best fitted for said office, and shall thereupon certify the same to the county board submitting such list, who shall then make an order appointing, from the number found eligible, one such person superintendent of highways for such county: *Provided, however,* that if on the list submitted there is found no person qualified for the position the county board shall in like manner submit a further list and if on this second list no one is found qualified the county board may employ some person other than a resident of the county and who has passed satisfactorily the examination presented by the State Highway Commission. No part of any moneys appropriated by the State for the building and maintaining of State aid roads shall be apportioned to any county until such county superintendent of highways shall have been appointed.

(B) TERM OF OFFICE—SALARY.] The term of office of each county superintendent of highways shall be six years and until his successor is duly appointed and qualified. He shall receive a salary payable out of the general funds of the county in a sum to be fixed by the county board.

(C) REMOVAL.] Any county superintendent of highways may be removed from office by the county board of his county for incompetence, neglect of duty or malfeasance in office.

(D) POWERS AND DUTIES.] The county superintendent of highways shall, subject to the rules and regulations of the State Highway Commission:

(1) Prepare plans, specifications and estimates for all bridges to be built by the county. Such plans and specifications, before being finally adopted, shall be submitted to the State Highway Commission and approved by them.

(2) Act for the county in all matters relating to the supervision of the construction and maintenance of any road or bridge constructed or maintained at the entire expense of the county or at the joint expense of the county and any town or road district therein, as hereinafter set forth.

(3) Visit and inspect the highways and bridges in each town or district of his county, at least once in each year and whenever directed so to do by the State Highway Commission, or the State Highway Engineer, and advise and direct the highway commissioners of the several towns or districts in his county as to the best methods of repair, maintenance and improvement of highways and bridges.

(4) Subject to the direction of the State Highway Commission, to supervise the repair and maintenance of all State aid roads within his county.

(5) Keep a record of all contracts or purchases of materials, machinery or apparatus to be used in road construction in excess of two hundred dollars (\$200) approved by him in any town or district as hereinafter provided.

(6) Perform such other duties as may be prescribed by law, the rules and regulations of the State Highway Commission or the direction of the State Highway Engineer in conformity thereto. Other than as above specifically indicated, the county superintendent of highways shall, to all intents and purposes, be regarded as a deputy to the State Highway Engineer: *Provided, however,* that no county superintendent of highways shall be required, without his consent, and the consent of the board of supervisors, or the board of county commissioners, of the county in whose employ he is to perform services in any other county.

(E) VACANCY.] In case the office of county superintendent of highways in any county shall at any time be vacant, and a temporary emergency shall arise requiring that some duly qualified official perform the duties of said office, then the State Highway Commission may designate any competent person to perform the duties of such office during the existence of such temporary emergency.

ARTICLE IV.

STATE AID.

9. State aid authorized.
10. Highways to be designated by county boards.
11. Total mileage of such highways.
12. Selection of highways to be indicated on map.
13. When changes to be made on map by State Highway Commission—copy kept by county clerk.
14. Map entered on official records—changes.
15. When county board fails to forward to State Highway Commission map within six months.
16. Improvement of the system—how carried on.
17. Where any county fails to provide amount equal to allotment by State Highway Commission.
18. What considered sufficient acceptance of allotment to county.
19. Proceedings for construction of State aid road—preliminary resolution of county board.
20. Examination of proposed highway—approval or disapproval by commission.
21. Maps, plans, specifications and estimates.
22. Eminent domain.
23. Report of State Highway Commission and to county board.
24. Final resolution of state Highway Commission.
25. Final resolution of county board.
26. Moneys held as separate fund.
27. Final notice to State Highway Commission.
28. Order of construction of State aid roads.
29. Contract for State aid roads. 1. Advertising for proposals. 2. Proposals. 3. Award of contract. 4. Rejection of proposals. 5. Form of contract. 6. Bond of contractor. 7. Payments of contracts.
30. Acceptance of State aid road when completed.
31. Payments—how made—effect of contract.
32. Legal effect of contract.
33. Roads constructed directly by the State.
34. County line roads.
35. Repair and maintenance of State aid roads.
36. Public utilities.

9. **State aid authorized.]** § 9. Public highways, or sections thereof, including bridges therein, may be laid out, improved, or constructed at the joint expense of the State and any county within the State as hereinafter provided. In such case the State shall contribute one-half the expense thereof and the county, or counties, through which the said highway or portion thereof passes shall contribute the remaining one-half. Such highways hereinafter known as "State Aid Roads" may be laid out, constructed or improved in the manner hereinafter directed: *Provided, however,* that no road or part thereof lying within the corporate limits of any city or village within this State shall be improved or constructed with State aid.

10. Highways to be designated by county boards.] § 10. At their next regular or special meeting following the passage of this Act it shall be the duty of the supervisors in counties under township organization, or the board of county commissioners in counties not under township organization, to designate those public highways within their respective counties that shall come under the provisions of this Act. The highways to be designated by the county boards shall be as nearly as possible those highways connecting the principal cities and trading points in each county with each other, and also with the principal cities and trading points in other counties.

11. Total mileage of such highways.] § 11. Such highways shall not include any portion of a public highway within the corporate limits of any city or village; nor shall the total mileage of such highways in any county exceed, in counties of the first class, more than fifteen per centum of the total public road mileage of that county, nor exceed twenty per centum of the public road mileage in counties of the second class, and shall not exceed twenty-five per centum of the public road mileage in counties of the third class. By public roads it is understood to mean all public roads within the State except those within the limits of incorporated cities and villages; the public road mileage of the counties to be that as determined and published by the State Highway Commission.

12. Selection of highways to be indicated on map.] § 12. The county boards shall indicate the highways selected as aforesaid by marking them upon some map which shows the public roads and section lines in the county, and for this purpose existing atlas maps may be used, provided the roads selected are plainly marked thereon.

After the county boards have so selected the highways within their respective counties as aforesaid, and indicated the same on a map of the county, it shall be the duty of the county clerk immediately to forward said map, with his signature thereon attesting to the validity of the same, to the State Highway Commission. The State Highway Commission shall examine the map with the roads located thereon, and if the roads selected in one county do not connect with the roads selected in another county to make convenient through roads between the various cities and trading points of the different counties, the State Highway Commission shall make such changes as will best serve to make the most direct routes between such cities and trading points of the different counties, and return to the county clerks the maps with the corrections shown thereon.

13. When changes to be made on map by State Highway Commission—Copy kept by County Clerk.] § 13. If in the judgment of the State Highway Commission it becomes necessary to re-locate the routes as selected by the county board for State highways in any county, the State Highway Commission may notify

the respective boards who shall, at their special meeting when they are selecting the State highways, appoint a committee not to exceed five in number, who shall, if they choose, appear before the State Highway Commission, who shall give hearings on the relocation of the routes as first selected by the county boards. After taking into consideration the information thus presented by these special committees, the State Highway Commission shall then proceed to indicate the routes along which State aid roads may be constructed, as hereinafter provided. The highways selected by the county boards and shown on the maps as revised by the State Highway Commission, shall be the highways to which the provisions of this Act shall apply, and they shall not apply to any other public highways. After the county map has been finally corrected by the State Highway Commission, a copy shall be returned to the county clerk and a copy retained by the State Highway Commission.

14. Map entered on official records—Changes.] § 14. The county clerk shall enter the map returned to him among his official records, and no changes in the routes indicated thereon shall be made, except by a vote of the county board and with the approval of the State Highway Commission, as hereinafter indicated; and no changes whatever shall be made in the routes of such highways prior to three years after the filing of the first map thereof, except that in the event the routes as first selected and shown do not total a mileage equal to the percentage allowed for that county, additional roads may be added until the total percentage is equaled.

15. When county board fails to forward to State Highway Commission map within six months.] § 15. If any county board shall fail within six months after the passage of this Act to forward to the State Highway Commission a map showing the routes selected for State aid roads, then the State Highway Commission may make such selection itself from the best information that may be available, and a copy of such map with the roads selected shall be sent to the county clerk of those counties whose boards have not made a selection within the six months as herein provided, which fact shall be indicated on the map submitted by the State Highway Commission; and it shall be the duty of the county clerk to file such map among his records.

16. Improvement of the system—How carried on.] § 15a. The improvement of the system of State highways as herein provided shall be carried on as follows: From such appropriations as the General Assembly may from time to time make for the purpose of carrying out the provisions of this Act, there shall be allotted by the State Highway Commission each year for each county an amount

that shall bear the same ratio to the total appropriation for that year that the total amount levied in each county for roads and bridges bears to the total amount levied in the State for roads and bridges, as determined from the published reports of the Auditor of Public Accounts from the last year so reported: *Provided*, that to counties, in which more than 40 per cent of the total amount appropriated by the General Assembly for building roads is collected, including any amount collected for automobile and kindred licenses, and devoted to road building by such appropriation, there shall be allotted, under the provisions hereof, an amount equal to twenty-five per cent (25%) of the amount so collected in such county.

The sum so allotted to each county shall be used to defray the cost of constructing State aid roads when such work is carried on in conformity with the provisions of this Act, provided that the allotment made by the State shall not be used to defray more than one-half the cost of any improvement done under the provisions of this Act.

17. **Where any county fails to provide amount equal to allotment by State Highway Commission.]** § 15b. If for any reason any county shall within six months from the date of the allotment fail to provide and appropriate an amount equal to said allotment by the State Highway Commission for the purpose of constructing State aid roads, then the amount so allotted shall be forfeited by said county and the same shall be re-allotted to those counties which have complied with the requirements herein contained.

18. **What considered sufficient acceptance of allotment to county.]** § 15c. It shall be considered sufficient acceptance of the allotment to a county of the State appropriation for the construction of State aid roads, if a county board shall give notice to the State Highway Commission that it has assessed a tax to raise its portion of the cost, or that it has passed an order submitting to a vote of the people the question of raising an additional tax for this purpose, or that it has passed an order submitting to a vote of the people the question of issuing bonds for this purpose. Otherwise, a county's allotment shall be considered forfeited, as provided in section 15b of this Act.

19. **Proceedings for construction of state aid road—Preliminary resolution of county board.]** § 16. Whenever the county board of any county desires to initiate proceedings for the construction of a State aid road, along a route designated as aforesaid, such county board may proceed in the manner following. The county board may pass a resolution stating that the public interest demands the improvement of a highway or section thereof within

the county, and requesting that it be constructed or improved as provided in this article. Such resolutions shall contain a description of such highway or section thereof. The county clerk shall, within ten days after the passage of such resolution, transmit a certified copy thereof to the State Highway Commission.

20. Examination of proposed highway—Approval or disapproval by commission.] § 17. As soon as practicable after the receipt of such resolution, the State Highway Commission shall consider the apparent desirability and importance of the proposed improvement, and shall determine whether such proposed improvement will be of public utility and convenience, and whether the construction thereof will be practically possible. After such consideration the commission shall certify their approval or disapproval of the proposed improvement to the county board making application therefor.

21. Maps, plans, specifications and estimates.] § 18. Whenever the commission shall have made their preliminary order as aforesaid, in favor of the construction or improvement of a public highway or section thereof, the said commission shall direct the State Highway Engineer, or the assistant State highway engineer to cause proper surveys to be made and to prepare suitable maps, plans, specifications and estimates of cost of the proposed improvement. In the preparation of such plans, specifications and estimates, the State Highway Commission may cause to be included therein, the value of any materials or the fair rental value of any implements, apparatus or machinery suitable for road construction which the State Highway Commission desires should be furnished or supplied by the State. In the preparation thereof the State Engineer may call upon the county superintendent of highways to render such assistance and to perform such part of such work as he shall deem necessary. The preparation of such plans, specifications, surveys and estimates of cost shall be subject to the general direction and control of the State Highway Commission. If deemed advisable such plans, surveys, specifications and estimates may provide for the widening of an existing highway, or provide for a reasonable deviation from the route described in the preliminary resolution of the county board.

22. Eminent domain.] § 19. In case the plans and surveys provided for in the preceding section require the taking or damaging of the property of any private land owner the State Highway Commission in such manner as they may determine, shall, if possible, agree with such private owner relative to the amount of damages sustained, conditioned upon the construction of the proposed improvement. Such agreement when made, shall be given full force

and effect according to the terms thereof. In case such land owner fails to reach an agreement with the commission respecting such damages, or is legally incapable of so doing, the said State Highway Commission may file a petition in any court of competent jurisdiction addressed to any judge thereof in vacation, praying for the assessment of damages for such proposed improvement, after the manner now provided by law relative to the exercise of the right of eminent domain. The damages as thus finally determined either by agreement or proceedings in eminent domain shall be included in the estimate of the cost of the proposed improvement, to be borne equally by the State and the county constructing the same.

In case a proposed improvement be abandoned after a resort to proceedings in eminent domain as aforesaid, the costs of such proceedings to which the property owner is by law entitled, shall nevertheless be paid one-half out of the State road and bridge fund and the remaining one-half by the county.

23. Report to State Highway Commission and to County Board.] § 20. Whenever the surveys, plans, specifications and estimates of the proposed improvement are fully completed and determined, the State Highway Engineer shall make a complete report thereof and deliver the same to the State Highway Commission, and shall also transmit a copy thereof to the county board of the county wherein it is proposed to construct the improvement.

24. Final resolution of State Highway Commission.] § 21. Upon receiving the surveys, plans, specifications and estimates provided for in the preceding sections, the State Highway Commission shall finally determine whether they will authorize the construction of the proposed improvement as a State aid road. The commission shall thereupon at once cause a copy of such determination to be transmitted to the county board.

25. Final resolution of county board.] § 22. At any regular or special meeting of the county board held after notice of the decision of the State Highway Commission to authorize the construction of the proposed improvement as aforesaid, the county board shall determine whether it will authorize the proceedings necessary to enable the county to contribute the one-half of the cost required for the construction of State aid roads as provided in this Act. When a county board has once adopted a final resolution providing for the construction or improvement of a highway or a section thereof in accordance with such plans and specifications, no resolution thereafter adopted by such board shall rescind or annul such prior resolution, either directly or indirectly, excepting under the advice and with the consent of the State Highway Commission. In case the county board desires that such provision be made for the

construction of a State aid road, it may proceed in either of the methods following:

(1) In case there be sufficient funds in the county treasury available therefor, the county board may appropriate therefrom sufficient to meet one-half the cost of the improvement.

(2) If the county board so desires and deems it necessary for the purpose of the improvement herein authorized, the said county board, in the manner now provided by law for issuing bonds for county purposes, may submit to the legal voters of their county the question of issuing such county bonds. In such case the votes in favor of the proposition submitted shall be "For County Bonds for State Aid Roads," and those against shall be "Against County Bonds for State Aid Roads."

26. § 23. All moneys appropriated by any county board to aid in the construction of a State aid road, and all moneys raised by taxation therefor shall be held as a separate fund therefor until paid out according to the provisions of this Act, and shall not be expended for any other purpose.

27. **Final notice to State Highway Commission.]** § 24. In case the county finally determines in either of the methods indicated in the preceding section, to make provisions for the contemplated State aid road, the county clerk shall at once notify the State Highway Commission thereof.

28. **Order of construction of State aid roads.]** § 25. Upon the receipt of the notice that the county has finally determined upon the construction of a State aid road in the manner aforesaid, the State Highway Commission shall proceed as provided in this article. In so far as practicable, in the opinion of the State Highway Commission, the construction and improvement of State aid roads shall be taken up and carried forward within the several counties of the State in the consecutive order of the date of the receipt by the commission of the certified copies of the final resolutions adopted by the various county boards making provision for such construction or improvements, as aforesaid: *Provided*, that until the notices and proceedings have been given and had as in the preceding sections provided the designated roads shall remain under the control of the township road authorities.

29. **Contract for State aid roads.]** § 26. State aid roads may be constructed or improved by contract in the manner provided herein. No contract for the improvement or construction of a State aid road shall be entered into unless at the time, there is in the State road and bridge fund, subject to the order of the State Highway Commission, sufficient moneys to defray the portion of the cost thereof which the State is required to contribute under the provisions of this Act. Upon the completion and final adoption or ap-

proval, as provided by law, of the plans and specifications and estimates for the construction or improvement of a State aid road, a contract therefor may be executed as provided herein.

In letting contracts for the building of bridges, or culverts, wherein the county alone is interested, or wherein the county and State are interested, or the county and township or road district are interested, it shall be the duty of the officials in letting said contracts to invite, receive and consider proposals on any other plan other than the one prepared by the county superintendent of highways, or State Highway Commission, and they shall require that all proposals on such plans shall be accompanied with complete stress diagrams, and specifications; nature, quality and size of materials to be used; strength of structure when completed, etc., it being understood, however, that before any such plan shall be finally adopted, it shall, in like manner as all other plans, profiles, specifications and estimates submitted, have the approval of the county superintendent of highways and the State Highway Commission.

(1) ADVERTISING FOR PROPOSALS.] The State Highway Commission shall advertise for proposals for the construction or improvement of such highways or sections thereof according to the plans, specifications and estimates prepared therefor. The advertisement shall be limited to a brief description of the work proposed to be done, the terms and conditions under which proposals will be received, the time and place where the same will be opened, and such other matters as the commission may deem advisable to include therein. Such advertisement shall be published at least once in each week for two consecutive weeks in a newspaper, published in the county in which such highway or section thereof is to be constructed or improved, and in such other newspapers as the commission may designate. In such advertisement the State Highway Commission may provide that certain materials, or machinery or implements suitable for road construction, shall be furnished by the State or used in the construction of said State aid road, and may also indicate the fair value of the same or for the use thereof.

(2) PROPOSALS.] Each proposal shall specify the gross sum for which the work will be performed exclusive of such materials as may be furnished by the State and also shall include the amount to be charged for such item specified in the estimate. The commission may prescribe and furnish forms for the submission of such proposal and may prescribe the manner of submitting the same which shall not be inconsistent herewith. The proposals shall be publicly opened at the time specified in the advertisement aforesaid and when opened such proposals shall be subject at all reasonable times to public inspection and at the time of opening shall be publicly read.

(3) AWARD OF CONTRACT.] The contract for the construction or improvement of such highways or section thereof shall be awarded to the lowest responsible bidder except that no contract shall be awarded at a sum which, together with the value of materials and machinery to be furnished by the State as fixed by the State Highway Commission, shall exceed the estimate made for the construction or improvement of such highway or section thereof in accordance with the aforesaid plans and specifications. The lowest bid shall be deemed to be that which specifically states the lowest gross sum for which the entire work shall be performed, including all the items specified in the estimate therefor.

(4) REJECTION OF PROPOSALS.] The commission may reject any or all proposals and may at once advertise for new proposals as hereinbefore provided, if in their opinion the best interests of the State will thereby be promoted.

(5) FORM OF CONTRACT.] The commission shall prescribe the form of contract and may include therein such matters as they may deem advantageous to the State. Such form shall be uniform in so far as may be.

(6) BOND OF CONTRACTOR.] Each contractor, before entering into a contract for such construction or improvement, shall execute a bond in the form prescribed by the commission, with sufficient sureties to be approved by the commission, conditioned that he will perform the work in accordance with the terms of the contract, and with the plans and specifications and that he will commence and complete the work within the time prescribed in the contract. Such bond shall also provide against any direct or indirect damages that may be suffered or claimed on account of such construction or improvement during the time thereof, and until the highway is accepted.

(7) PAYMENTS ON CONTRACTS.] The contract may provide for partial payments to an amount not exceeding 90 per centum of the value of the work done which shall be paid in the manner provided by this article when certified to by the commission. In case partial payments are made the State and county shall each pay one-half thereof as the work progresses. Ten per centum of the contract price shall be retained until the entire work has been completed and accepted.

30. Acceptance of State aid road when completed.] § 27 Upon the completion of a State aid road or section thereof constructed or improved under a contract let as provided in this article, the State Highway Engineer shall inspect the same, and if completed as provided in the contract, he shall thereupon report to the State Highway Commission. If the commission approve, they shall notify the contractor thereof and the highway or section thereof so constructed or improved shall be deemed to have been accepted by

the State. Such acceptance shall also be communicated by the State Highway Commission to the county clerk of the county wherein such improvement or portion thereof is located.

31. Payments—How made—Effect of contract.] § 28. Upon the acceptance by the State of an improvement as hereinbefore provided, the contractor shall be entitled to receive the portion of the contract price then remaining due and unpaid. The contractor shall receive one-half of the total cost of such improvement directly from the State treasury, and the other half shall be paid by the county to such contractor.

Upon the order of the State Highway Commission, the Auditor of Public Accounts is hereby authorized to draw his warrant upon the State Treasurer for any unexpended balance remaining in the State road and bridge fund.

32. Legal effect of contract.] § 29. Any contract entered into by and between the State Highway Commission and any contractor for the construction of a State aid road according to the provisions of this Act shall be taken and held to confer upon the contractor the right to enforce in any appropriate legal action against the county wherein the improvement is located the payment of the portion of the cost thereof which the county is required to pay under the provisions of this Act.

33. Roads constructed directly by the State.] § 30. In case the State Highway Commission upon a second advertisement for bids or proposals for the construction or improvement of a State aid road shall not be able to let the contract for a sum, which, together with the value of materials, apparatus, implements and machinery to be furnished by the State determined as aforesaid, shall not exceed the estimate of the cost thereof previously made by the State Highway Engineer, the State Highway Commission may then proceed directly to construct such State aid road. In such case the county within which such proposed improvement shall be located, shall not be required to contribute thereto more than one-half the estimated cost thereof as aforesaid.

34. County line roads.] § 31. State aid roads may be constructed or improved on county lines. In case two counties desire to secure the construction or improvement of a public highway situated upon or near the boundary line between them, the respective county boards thereof may, by appropriate resolutions, initiate proceedings therefor. To this end such county boards may, by concurring resolutions, fix the portion of the one-half the total cost of construction which should be borne by each county. Such resolutions when duly transmitted to the State Highway Commission shall

be considered in such cases as the preliminary application therefor, as hereinbefore provided. If approved by the State Highway Commission, each county board may appropriate the portion of the cost to be borne by such county, or authorize the submission of the question of issuing bonds as hereinbefore provided.

In all proceedings contemplating the construction or improvement of a county line road as provided in this section, all acts of each county board relative thereto, together with the result of any vote upon the question of levying a tax or issuing bonds as provided herein, shall be communicated by the county clerk of each county to the county clerk of the other county, as well as to the State Highway Commission.

In case either county shall refuse to take the steps necessary to secure the construction or improvement of such county line road, as provided in this section, then all prior proceedings relative thereto on the part of the other county shall be regarded as suspended.

35. Repair and maintenance of State aid roads.] § 32. Whenever any State aid road shall be constructed or improved in any county under the provisions of this Act, the State Highway Commission, either directly or through the State Highway Engineer, the assistant State highway engineer, or the county superintendent of highways shall thereafter keep all such roads in proper repair, and the total cost of such maintenance shall be paid out of the State road and bridge funds upon the warrant of the Auditor, whenever such payment shall be ordered by the State Highway Commission. For the purpose of keeping such roads in proper repair the State Highway Commission shall have authority to purchase all necessary tools, machinery, supplies and materials, and may employ, or authorize the State Highway Engineer to employ, all labor necessary therefor.

36. Public utilities.] § 33. No steam or electric railroad company, telephone or telegraph company, or company laying or using pipe lines, shall have the right to locate or construct its road or place its poles or wires, or lay its pipe lines upon or along any State aid road, without the consent of the county board of the county wherein it is proposed to place or locate the same. Such consent may be granted for any period not longer than twenty years upon petition of the company, upon such terms and conditions, not inconsistent with this Act, as such county board shall deem for the best interests of the public: *Provided*, that before any such consent of the county board shall become effective the said county board shall receive the approval of the State Highway Commission to the use of the said State aid road for such purpose and the conditions upon which the same shall have been granted: *And, provided, further,*

that no such consent shall be granted except upon the condition that the company will pay all damages to the owners of the property abutting upon said State aid road which they may sustain by reason of the location or construction of the said steam or electric railroad or the placing of the said telephone or telegraph poles or wires, or the laying of the said pipe lines, the same to be ascertained and paid in the manner provided by law for the exercise of the right of eminent domain.

ARTICLE V.

BRIDGES AND IMPROVEMENTS CONSTRUCTED AND REPAIRED BY A COUNTY OR AT THE JOINT EXPENSE OF A COUNTY AND ANY TOWN OR ROAD DISTRICT THEREIN.

- 37. Bridges may be built by county.
- 38. Aid from county board.
- 39. Bridges built by two counties.
- 40. Contracts by commissioners of adjoining counties.
- 41. Approaches to bridges on or near county lines.
- 42. Suit on joint contract.

37. **Bridges may be built by county.]** § 34. In case the county board shall deem it expedient to build a bridge in any town or road district therein, the said county board may order the same built at the entire expense of such county. Such bridge shall in such case be constructed according to plans and specifications prepared by the county superintendent of highways, subject to the approval of the State Highway Engineer.

38. **Aid from county board.]** § 35. When it is necessary to construct or repair any bridges over a stream, or any approach or approaches thereto, by means of an embankment or trestle work on a public road, in any town or district or on or near to or across a town or district line, in which work the town or district is wholly or in part responsible, and the cost of which will be more than twelve cents on the one hundred dollars on the latest assessment roll, and the levy of the road and bridge tax for two years last past in said town or district was in each year for the full amount allowed by law to be raised therein for all road and bridge purposes except for damages incurred in laying out, altering, widening or vacating roads, the major part of which levy is needed for the ordinary repair of the roads and bridges, the commissioner of highways may petition the county board for aid, and if the foregoing facts shall appear, the county board shall appropriate from the county treasury a sum sufficient to meet one-half of the expenses of said bridge or other work, on condition the town or district asking aid shall furnish the other half of the required amount.

LETTING CONTRACTS.] When it is determined by the county board to grant the prayer of the highway commissioner asking aid for the construction of such bridge or other expensive work, the county board shall thereupon enter an order directing the county superintendent of highways to prepare plans and specifications for such improvement. The contract for such improvement shall thereupon be let in the manner authorized by said county board, subject to provisions of the law relating to the letting of contracts: *Provided, however,* that no county, town or road district shall be liable for any part of such expenses or compelled to pay any part of its appropriation for such purpose until all of the work has been fully completed and accepted by the county superintendent of highways and such acceptance properly certified to by said officer and presented to the county board at a meeting held after the completion of said work, which certificate shall contain itemized account of the expenditures; and a copy thereof shall also be filed with the town or district clerk as the case may be.

39. Bridges built by two counties.] § 36. Bridges over streams which divide counties, and bridges on roads on county lines, and bridges within eighty rods of county lines, shall be built and repaired at the expense of such counties. And all such bridges over streams which form the boundary line between two counties, and all such bridges within eighty rods of such boundary line, when the cost of constructing the same shall be \$5,000 or over, shall be built by such counties respectively in the proportion that the taxable property in each county respectively bears to each other according to its assessed value as equalized at the time of constructing such bridge. And when any county desires to build any such bridge across any stream which is the boundary line between such county and another county, or desires to build any such bridge within eighty rods of such boundary line, and the cost of such bridge will equal or exceed \$5,000, and the county desiring to construct such bridge has appropriated its share of the cost of constructing the same, then it shall be the duty of such other county to make an appropriation for its proportion of the cost of said bridge on the basis of the assessed value of the property, real and personal, of each of said counties according to the last preceding assessment thereof as equalized, and if such other county fails or refuses to make an appropriation for its proper proportion of the cost of constructing such bridge, any court of competent jurisdiction shall issue an order to compel such county to make such appropriation upon a proper petition for that purpose, and the cost and expense of maintaining and keeping the same in repair after the same is built and constructed shall be borne in the proportion of the assessed value of the property in each of

said counties according to the latest equalized assessment thereof: *Provided*, that for the building and maintaining of bridges over streams near county lines in which both are interested and where the cost thereof is less than \$5,000, the expense of building and maintaining any such bridge shall be borne by both counties in such portion as shall be just and equitable between the counties, taking into consideration the taxable property in each, the location of the bridge, and the advantage of each, to be determined by the commissioner in making contracts for the same, as provided for in section 37 of this Act.

40. Contracts by commissioners of adjoining counties.] § 37. For the purpose of building or keeping in repair such bridge or bridges, it shall be lawful for the county boards of such adjoining counties, to enter into joint contracts, and such contracts may be enforced in law or equity against such county boards, and such county boards may be proceeded against jointly, by any parties interested in such bridge or bridges, for any neglect of duty in reference to such bridge or bridges, for any damage growing out of such neglect.

41. Approaches to bridges on or near county lines.] § 38. Approaches to all bridges built and constructed under and by virtue of the three preceding sections, shall be built, constructed and maintained by the respective counties within which such approach or approaches may be located, and all approaches to any and all such bridges as have heretofore been built and constructed.

42. Suit on joint contract.] § 39. If the county board of any such county, after reasonable notice in writing from such other county board shall neglect or refuse to build or repair any such bridge when any contract or agreement has been made in regard to the same, it shall be lawful for the county board so giving notice to build or repair the same, to recover, by suit, one-half (or such amount as shall have been agreed upon) of the expense of so building or repairing such bridge, with costs of suit and interest from the time of the completion thereof, from the county board so neglecting or refusing.

ARTICLE VI.

TOWN AND DISTRICT ORGANIZATION AND ADMINISTRATION FOR HIGHWAY PURPOSES.

SUBDIVISION I.

Organization: Division Into Towns and Districts.

43. Town and district organization similar.

44. Counties not under township organization—division into districts.

1. Counties already divided into districts. 2. Counties not already so divided. 3. Corporate name of district. 4. Corporate capacity of district. 5. Alteration of boundaries of road districts.

43. Town and district organization similar.] § 40. For all purposes relating to the construction, repair, maintenance and supervision of roads and bridges, the several towns in counties under township organization, and road districts in counties not under township organization, shall, as near as may be, and subject to the provisions of this Act, be regarded as analogous in corporate authority, and the powers and duties of the highway officers thereof shall be similar in extent and effect.

44. Counties not under township organization—Division into districts.] § 41. Counties not under township organization shall be divided into road districts by the county boards thereof, in the manner hereinafter set forth. All road districts, where it is practicable, shall be composed of territory not less than a congressional township. Fractional or whole townships may be added to other fractional or whole townships. The districts so formed shall be designated by some number.

(1) **COUNTIES ALREADY DIVIDED INTO DISTRICTS.]** In counties not under township organization, wherein road districts are already now laid out and established under the provisions of an Act approved May 4, 1887, in force July 1, 1887, entitled, "An Act to provide for the organization of road districts, the election and duties of officers therein, and in regard to roads and bridges, in counties not under township organization, and to repeal an Act and parts of Acts therein named," the road districts already laid out therein by the county boards thereof shall be continued in existence, unless the same shall be altered in the manner hereinafter set forth: *Provided, however,* that all incorporated cities, towns and villages which have heretofore been excluded from road districts in such counties shall hereafter be included therein, and in all cases where necessary therefor, the county boards of such counties shall make provision to create such city, town or village into a road district, or to make it a part of some road district already formed.

(2) COUNTIES NOT ALREADY SO DIVIDED.] In all counties not under township organization, and operating under the provisions of an Act approved May 10, 1901, entitled, "An Act in regard to roads and bridges, and to provide for the adoption of the same," and wherein road districts are not already laid out and established, it shall be the duty of the county boards thereof, at their first session after this Act shall be in force and effect, to divide such counties into road districts, as provided herein.

(3) CORPORATE NAME OF DISTRICT.] The corporate name of each district shall be "Road District No.....," and all actions by or against such district shall be in its corporate name.

(4) CORPORATE CAPACITY OF DISTRICT.] Every district so organized shall have corporate capacity to exercise the powers granted thereto, or necessarily implied and no others. It shall have power: (1) To sue and be sued. (2) To acquire by purchase, gift or devise, and to hold property, both real and personal, for the use of its inhabitants, and again to sell and convey the same. (3) To make all such contracts as may be necessary in the exercise of the powers of the district.

(5) ALTERATION OF BOUNDARIES OF ROAD DISTRICTS.] The board of county commissioners of each county shall have full and complete power and jurisdiction to alter the boundaries of road districts and to change road district lines in their respective counties to suit the convenience to the inhabitants residing therein, but no such change shall be made under the provisions of this Act unless at least twenty of the legal voters of such road district shall petition for such alteration or change; nor shall such alteration or change be made by such board of county commissioners without notice thereof having been given by posting up notices in not less than five of the most public places in each of the several towns or road districts interested in such proposed alterations or changes.

SUBDIVISION II.

Highway Officers: Their Election, Powers, Duties and Compensation.

45. Town and district road officers. a. Commissioners. b. Clerk. c. Treasurer. d. Who eligible.
46. Elections—provisions generally applicable.
47. Same—counties operating under special act—provisions applicable to first election—notice of first election—officers elected—canvass of votes—expense.
48. Elections—counties not under township organization—provisions relating to the conduct thereof—annual election for district officers—absence of officers—notice of any annual or special election—district elections—how conducted—who entitled to vote—canvass of—votes—certificate, poll list and ballots sealed and sent to dis-

strict clerk—canvass of returns—notice of result of election to voters—drawing lots in case of tie—notice—notice of election to persons elected—filing list of officers elected in office of county clerk.

49. Oath required—neglect to take oath—refusal to serve.
50. When term of commissioner or clerk expires successor to demand books, papers, etc.—when office becomes vacant by resignation or otherwise—demand, etc.—delivering upon oath all records, books, etc.—oath, by whom administered.
51. Vacancies in office—counties under township organization.
52. Same—counties not under township organization—vacancy in office—how filled—powers of persons appointed—certificate of appointment—justice of peace may accept resignation of officer—notice.
53. Meetings, powers and duties of highway commissioners. a. Meetings. b. General powers and duties. c. Report.
54. Duties of clerk. 1. Recording orders of commissioners. 2. Books and stationery for office. 3. Copy of papers and transcripts from records—evidence.
55. Treasurer. 1. Bond. 2. Itemized statement of receipts and disbursements.
56. Compensation of officers—commissioners—clerk—treasurer—justice of the peace.
57. Offenses and penalties.

45. Town and district road officers—(A) Commissioners.]

§ 42. In each township in counties under township organization and in each road district in counties not under township organization there shall be a board of highway commissioners consisting of three members, each of whom shall serve for a term of three years and until his successor is duly elected and qualified, and who shall be elected in the manner hereinafter set forth. The powers and duties of such highway commissioners shall be as hereinafter indicated.

(B) CLERK.] In counties under township organization the town clerk shall act as the clerk of the board of highway commissioners of such town. In counties not under township organization there shall be elected in each road district a district clerk, who shall hold his office for the term of three years and until his successor is elected and qualified.

(C) TREASURER.] In counties under township organization the supervisor of each town shall be *ex officio* treasurer of the road and bridge fund. In counties not under township organization the district clerk shall be *ex officio* treasurer of such fund.

(D) WHO ELIGIBLE.] No person shall be eligible to the office of highway commissioner unless he shall be a legal voter and have been one year a resident of such town or district. In counties not under township organization the same limitation shall apply to the district clerk.

46. Elections—Provisions generally applicable.] § 43. In all counties under township organization the highway commission-

ers shall be elected at the annual town meeting and subject to the laws governing the same. In all counties not under township organization the highway commissioners and the district clerk shall be elected at annual elections to be held on the first Tuesday in April in each year. Until the first annual election held after this Act becomes effective, the several boards of highway commissioners and clerks now in office shall continue to exercise their respective powers and duties as heretofore. At such first annual election held after this Act shall become effective, there shall be elected in each township in counties under township organization, and in each road district in counties not under township organization, but which have already been divided into districts, one commissioner of highways as the successor of the commissioner of highways whose term of office shall then expire. Thereafter, the several highway commissioners then in office, and thereafter elected, shall exercise all the functions, powers and duties provided by this Act.

47. Same—Counties operating under special Act—Provisions applicable to first election.] § 44. In all counties not under township organization which are operating under the optional Act entitled, "An Act in regard to roads and bridges in counties not under township organization, and to provide for the adoption of the same," approved May 10, 1901, and which counties therefore are not already divided into road districts as aforesaid, the county board of each of said counties shall, at least twenty days before the first Tuesday in April next after this Act shall become effective, designate some central and convenient place in each district for the holding of the first district election, and shall also appoint three suitable electors of the district as judges of the election.

NOTICES OF FIRST ELECTION.] The county clerk shall thereupon make out notices, stating the time (which shall be the first Tuesday in April thereafter) and place of holding the first district election, and the names of the judges of the election so appointed, and deliver such notices to the sheriff of the county, who shall cause the same to be posted in not less than three of the most public places of the district, and not less than fifteen days before the time of holding such election.

OFFICERS ELECTED.] At such first election there shall be elected three commissioners of highways of whom one shall hold his office for one year, one for two years, and the third for three years, to be determined between them by lot before entering upon the duties of their office, and until their respective successors are elected and qualified. At such first election there shall also be elected a road district clerk who shall hold his office for three years and until his successor is elected and qualified.

CANVASS OF VOTES—EXPENSE.] After the canvass of the votes the judges shall make returns as provided in the general election laws of this State, to the county clerk, who shall make a canvass of the votes and immediately notify the persons elected of their election. The expenses of such first election shall be paid by the county.

48. Elections—Counties not under township organization—Provisions relating to the conduct thereof.] § 45. In all counties not under township organization the following provisions regarding elections shall be applicable.

ANNUAL ELECTION FOR DISTRICT OFFICERS—ABSENCE OF OFFICERS.] The annual election for district officers shall be held on the first Tuesday in April, of each year, at the place designated by the commissioners of highways. The commissioners of highways shall be *ex officio* judges, and the clerk shall be *ex officio* clerk of all district elections, but before entering upon the discharge of their duties they shall take the oath of office prescribed by the general election law of the State. In the absence of any of the above named officers the vacancy shall be filled by appointment by the commissioners present, and in case there is no commissioner present the electors present shall appoint such judges.

NOTICE OF ANY ANNUAL OR SPECIAL ELECTION.] Notice of the time and place of holding any annual or special election shall be given by the district clerk, or, in his absence, by the commissioners, by posting written or printed notices in at least three of the most public places in the district, at least fifteen days prior to such election.

DISTRICT ELECTIONS—HOW CONDUCTED.] The district elections shall be conducted in the same manner and subject to the same laws and regulations as prescribed for general elections: *Provided*, that no registration of voters shall be required.

WHO ENTITLED TO VOTE.] All persons possessing the qualifications of voters, who reside within the boundaries prescribed for such district shall be entitled to vote at such election.

CANVASS OF VOTES—CERTIFICATE, POLL LIST AND BALLOTS SEALED AND SENT TO DISTRICT CLERK.] The judges shall, immediately, upon closing the polls, make a canvass of the votes polled in the manner provided by the general election law of the State, and make a written statement or certificate of the number of votes cast at such election for each person or proposition voted for, and the office for which such person received such vote, and shall, within forty-eight hours thereafter, cause such certificate and poll list, together with the ballots cast at such election, to be separately sealed up and transmitted to the district clerk to be filed and preserved by him.

CANVASS OF RETURNS—NOTICE OF RESULT OF ELECTION TO VOTERS.] The commissioners of highways, together with some jus-

tice of the peace to be by them selected, and the district clerk shall, within five days after any election is held, meet and canvass said returns, and declare the result of said election. The canvass being completed, a statement of the result shall be entered at large, by the clerk of election, in the minutes of the proceedings, to be kept by him as required by this Act, which shall be publicly read by him to the electors present; and such reading shall be deemed notice of the result of the election, to every person whose name shall be entered on the poll list as a voter.

DRAWING LOTS IN CASE OF TIE—NOTICE.] In case two or more persons shall have an equal number of votes for the same office, the question of which shall be entitled to the office shall be decided by lot, under direction of the district clerk, but he shall give each party at least five days' notice of the time and place of drawing lots.

NOTICE OF ELECTION TO PERSONS ELECTED—FILING LIST OF OFFICERS ELECTED IN OFFICE OF COUNTY CLERK.] The clerk, within ten days after the canvass of the votes as hereinbefore provided in this section, shall transmit to each person elected to any district office, a notice of his election. He shall also file in the office of the county clerk a list of the names of all district officers elected at such election, who have qualified, within twenty days after such election shall be held.

49. Oath required.] § 46. Every person elected or appointed to the office of commissioner of highways, and every district clerk in counties not under township organization, before he enters upon the duties of his office, and within ten days after he shall be notified of his election or appointment, shall take and subscribe, before some justice of the peace or district or town clerk, the oath or affirmation of office prescribed by the Constitution, which oath shall, within five days thereafter, be filed with the district or town clerk.

In counties under township organization, no additional oath shall be required of the town clerk, to enable him to enter upon the discharge of the duties of his office as *ex officio* clerk of the board of highway commissioners.

NEGLECT TO TAKE OATH—REFUSAL TO SERVE.] If any person elected or appointed to either of the offices above enumerated, shall neglect to take and subscribe such oath, and cause the same to be filed as above required, such neglect shall be deemed a refusal to serve.

50. When term of commissioner or clerk expires, successor to demand books, papers, etc.] § 47. When the term of any commissioner of highways or clerk shall expire, and other persons shall be appointed to such office, it shall be the duty of such suc-

cessor, immediately after he shall have entered upon the duties of his office, to demand of his predecessor all the books, papers, moneys and other property under his control, belonging to such office.

WHEN OFFICE BECOMES VACANT BY RESIGNATION OR OTHERWISE—DEMAND, ETC.] Whenever either of the officers above named shall resign, or the office become vacant in any way, and another person shall be elected or appointed in his stead, the person so elected or appointed shall make such demand of his predecessor, or of any person having charge of such books, papers, moneys or other property.

DELIVERING UPON OATH ALL RECORDS, BOOKS, ETC.—OATH, BY WHOM ADMINISTERED.] It shall be the duty of every person so going out of office, whenever thereto required pursuant to the foregoing provisions, to deliver up on oath, all the records, books, papers, moneys and other property in his possession or in his control belonging to the office held by him; which oath may be administered by the officer to whom such delivery shall be made.

51. Vacancies in office—Counties under township organization.] § 48. In counties under township organization the provisions of law applicable to resignations from town offices, and the filling of vacancies therein, shall apply to highway officers in the same manner as to other town officers.

52. Same—Counties not under township organization.] § 49. In counties not under township organization the following provisions shall be applicable relating to vacancies in road district offices:

VACANCY IN OFFICE—HOW FILLED—POWERS OF PERSONS APPOINTED.] Whenever any district shall fail to elect the proper number of district officers to which such district may be entitled by law, or when any person elected to any district office shall fail to qualify, or whenever any vacancy shall happen in any district, from death, resignation, removal from the district or other cause, it shall be the duty of the county board to fill such vacancy by certificate under the hand and seal of the county clerk; and the persons so appointed shall hold their respective offices until the next annual election, and until their successors are elected and qualified; and shall have the same powers and be subject to the same duties and penalties as if they had been duly elected by the electors.

CERTIFICATE OF APPOINTMENT.] When any appointment shall be made, as aforesaid, the county clerk shall cause the certificate of appointment to be forthwith filed in the office of the district clerk, who shall immediately give notice to each person appointed.

JUSTICE OF PEACE MAY ACCEPT RESIGNATION OF OFFICER—NOTICE.] Any justice of the peace residing in such district, or if there be no justice residing in such district, then any justice in the

county, may, for sufficient cause shown to him, accept the resignation of any district officer of his district, and whenever he shall accept any such resignation, he shall forthwith give notice thereof to the district clerk of the district, or in his absence, to the president of the board of commissioners of highways, who shall make a minute thereof upon the district records. He shall also immediately give notice to the county clerk of any vacancy that may exist in any district office.

53. Meetings, powers and duties of highway commissioners —(A) Meetings.] § 50. The commissioners of highways of each town or road district shall meet on the second Tuesday next after the annual town meeting or road district election, in each year, at the office of the town or district clerk, and shall organize as a board by electing one of their number president. They shall also hold a regular semi-annual meeting between the first Tuesday in August and the first Tuesday in September of each year, at a time to be named by their president, for the purpose of determining the tax rate to be certified by them to their respective county boards, as hereinafter provided. Said board shall also hold other regular meetings at such times as they shall designate, and special meetings as occasion may require at the call of the president, or any two of the commissioners, and no official business shall be transacted by the board except at a regular or special meeting. The concurrence of at least two commissioners shall be required in all official actions taken by the board as a body, and all certificates or documents hereinafter required to be made or executed by the board of highway commissioners shall be signed by at least two members of said board.

(B) GENERAL POWERS AND DUTIES.] The highway commissioners of each town or road district shall have power and it shall be their duty:

(1) To lay out, alter, widen or vacate roads as hereinafter provided.

(2) To cause such roads used as highways as have been laid out as dedicated to public use, but not sufficiently described, and such as have been used for twenty years, but not recorded, to be ascertained, described and entered of record in the office of the district or town clerk.

(3) To determine the taxes necessary to be levied on property within his town or district for road and bridge purposes, subject to the limitations hereinafter provided.

(4) To direct the expenditure of all moneys collected in the town or district for road and bridge purposes and to draw warrants on the town or district treasurer therefor.

(5) To direct the construction and repair of roads and bridges within the town or district, to let contracts, employ labor and pur-

chase material and machinery therefor, subject to the limitations herein provided: *Provided, however,* that no contract shall be let for the construction or repair of any road or bridge or part thereof in excess of the amount of \$200, nor shall any machinery or other appliances to be used in road construction in excess of such amount be purchased without the approval of the county superintendent of highways.

(6) To have general charge of the roads and bridges of their town or district, to keep the same in repair and to improve them so far as practicable.

(7) To take possession of and keep under shelter, when not in use, all scrapers, plows and other tools belonging to the town or district wherever the same may be found, and not allow the same to go to waste, and not lend the same, except to persons employed to work the roads by contract or otherwise.

(8) To cause to be erected and kept in repair at the forks or crossing place of the most important public roads, post and guide boards, with plain inscription thereon, in letters and figures, giving directions and distances to the most noted places to which such road may lead; to prevent thistles, burdock, cockleburs, mustard, yellow-dock, Indian mallow and gympsion weed from seeding, and to extirpate the same so far as practicable; and to prevent all rank growth of vegetation in the public highway by causing the same to be cut and destroyed prior to the seeding of the same, and at the farthest prior to September 1st, in each and every year; and the said commissioners may, at their discretion, adopt any suitable and convenient mode of supplying water in troughs conveniently situated on the public highway for public use.

(9) To issue their warrant or order on the treasurer of the board of highway commissioners for the payment of all moneys paid out by such treasurer.

(C) REPORT.] The highway commissioners shall annually make report in writing showing:

(1) The amount of poll tax assessed, how much paid, and how much delinquent.

(2) The amount of road and bridge money received by him, and a full and detailed statement as to how and where expended, and the balance, if any, unexpended.

(3) The amount paid for damages in laying out, altering, widening or vacating roads, and right-of-way for ditches.

(4) The amount of liabilities incurred and not paid; and if such liabilities are undetermined, they shall be estimated.

(5) Any additional matter concerning the roads and bridges of the district he may think expedient and proper to make.

In counties under township organization such report shall be made to the board of town auditors at the semi-annual meeting im-

mediately preceding the annual town meeting. In counties not under township organization such report shall be made not later than the last Tuesday in March to the district clerk who shall file the same in his office and he shall record such report at large in the records of said road district.

54. Duties of clerk.] § 51. The town or district clerk shall have the custody of all records, books and papers of the town or road district, and he shall duly file all certificates or oaths and other papers required by law to be filed in his office. He is authorized to administer oaths and take affidavits in all cases required by law to be administered by town or district officers. The duties of the clerk shall further include:

(1) **RECORDING ORDERS OF COMMISSIONERS.]** He shall record in the book of records of his district, all orders and directions of the highway commissioners required by law to be kept, and as hereinafter provided for. All records and books required by law to be kept by such clerk shall be deemed public records and shall at all times be open to inspection without fee or reward. The clerk shall also meet with the highway commissioners whenever requested at any reasonable time to do so by the latter official.

(2) **BOOKS AND STATIONERY FOR OFFICE.]** The district clerk shall, from time to time as may be necessary, procure the proper books and stationery for his office and the cost thereof shall be paid out of the town or district treasury.

(3) **COPY OF PAPERS AND TRANSCRIPTS FROM RECORDS—EVIDENCE.]** Copies of all papers duly filed in the office of the town or district clerk and transcripts from the town or district records certified to by him shall be evidence in all courts in like effect as if the originals were produced.

55. Treasurer.] § 52. The treasurer of the road and bridge fund shall receive and have charge of all moneys raised in the town or district for the support and maintenance of roads and bridges therein, and for road damages, excepting such portions of the moneys as hereinafter directed to be paid to the authorities of incorporated villages, towns and cities. He shall hold such moneys at all times subject to the commissioners of highways, and shall pay them over upon the order of not less than two of them, and not otherwise. He shall keep an account in a book provided by the commissioners of all moneys received, and all moneys paid out, showing in detail to whom and on what account the same is so paid.

(1) **BOND.]** The supervisor or clerk, as the case may be, before becoming entitled to act as treasurer, and within ten days after his election, shall execute a bond in double the amount of moneys likely to come into his hands by virtue of this Act, conditioned that he will faithfully discharge his duties as such treasurer, that he will

honestly and faithfully account for and pay over, upon the proper orders, all moneys coming into his hands as treasurer, and the balance, if any, to his successor in office. Such bond shall be payable to the town or district, and shall be in such sum as the commissioners of highways shall determine. Said bond shall be approved by the commissioners of highways, and shall be filed in the office of the county clerk with such approval endorsed thereon: *Provided*, that if from any cause the commissioners of highways shall deem the bond so given insufficient, they may require a new bond: *And, provided, further*, that the commissioners shall have the right to fix any other sum to be required in any new bond so given. The commissioners of highways shall have power to bring suit upon such bond for any loss or damage accruing to the town or district by reason of any non-performance of duty, or defalcation on the part of the said treasurer.

(2) ITEMIZED STATEMENT OF RECEIPTS AND DISBURSEMENTS.] The treasurer shall also present annually on the first Tuesday in April to the highway commissioners an itemized statement of receipts and disbursements which shall be sworn to.

56. Compensation of officers—Commissioners.] § 53. The commissioners shall each receive for each day necessarily employed in the discharge of their duties the sum of two dollars (\$2.00) upon a sworn statement to be filed by such commissioner in the office of the town or district clerk showing the number of days he was employed and the kind of employment, and giving the dates thereof.

CLERK.] The town or district clerk shall receive two dollars per day for each day he shall be required to meet with the highway commissioners, and the same amount per day for the time he shall be employed as clerk of election, or in canvassing the returns of such election. He shall receive no other per diem. In addition to the above he shall also receive fees for the following services, to be paid out of the town or district funds, except where otherwise specified. For serving notice of election or appointment upon district officers, as required by this Act, twenty-five cents each. For posting up notices required by law, twenty-five cents each. For copying any record in his office and certifying to the same, ten cents for every hundred words, to be paid by the person applying for the same.

TREASURER.] The *ex officio* treasurer shall, in addition to the other compensation to which he is by law entitled, receive two per cent on all moneys paid out by him up to and including two thousand dollars and one per cent on all moneys paid out by him in excess of two thousand dollars, excepting such amounts as shall have been paid to his successor, also except all moneys paid out in payment of bonds or other borrowed money.

JUSTICE OF THE PEACE.] The justice of the peace whose services are required by this Act, shall receive the sum of two dollars per day for his services.

57. **Offenses and penalties.] § 54.** If any highway commissioner shall wilfully refuse to perform any of the duties enjoined upon him by this Act, he shall forfeit not less than ten dollars nor more than fifty dollars, and may be proceeded against in the name of the town or district for the recovery of such forfeiture before any court of the proper county having jurisdiction.

SUBDIVISION III.

The Raising of Revenue for Highway Purposes and the Application Thereof.

- 58. Poll tax. 1. Constable's duty having execution for poll tax.
- 59. General tax levy for road and bridge purposes.
- 60. Copy of certificate to be preserved.
- 61. Damages for laying out roads, etc.—tax levy for.
- 62. Tax rate—extension and collection of tax.
- 63. Road damages—orders out of tax to be levied.
- 64. Bonds may be issued by vote of special town or district meeting to build bridge, etc.
- 65. Road and bridge money—how paid.

58. **Poll tax.] § 55.** At their annual meeting to be held on the second Tuesday after the annual town meeting or district election in each year, each board of highway commissioners shall make out a list of able-bodied men in their town or district between the ages of twenty-one (21) and fifty (50) years and deliver the same to the town or district treasurer on or before the first day of May in each year, and assess at such meeting against such person upon such list a sum of not less than one (1) nor more than three (3) dollars, as a poll tax for highway purposes, to be paid in cash to such treasurer by the first Monday of June of each year: *Provided*, that paupers, idiots, lunatics and such others as are exempt by law shall not be compelled to pay a poll tax for highway purposes: *Provided, also*, that this list shall not include persons within the limits of cities or incorporated villages. The commissioners shall also, within ten (10) days after such list is delivered to the treasurer of the road and bridge fund, cause written or printed notices to be given to each person so assessed, notifying him of the time when and place where such tax must be paid, and if this poll tax shall not be paid by the first Monday of June in such year it shall be the duty of the commissioners of highways, in the name of the district or town, to bring suit therefor against such persons before some justice of the peace having jurisdiction thereof. Summons shall be issued and returned

in the same manner as provided by law in other cases. If judgment is rendered against defendant the court shall find in such judgment that the same is for poll tax unpaid, and shall endorse the same on the execution, if one is issued. No property belonging to the defendant shall be exempt from levy to satisfy such execution: *Provided, also*, that on petition of not less than twenty-five (25) legal voters of any town or district, asking to have the proposition to abolish the poll tax submitted to the legal voters of said town, or district, filed with the town or district clerk not less than fifteen (15) days before the annual town meeting or annual district election, then the town or district clerk shall state in the notice of the annual town meeting or district election that the legal voters of such town or district may vote by ballot for or against the payment of all poll tax, and if a majority of all the ballots cast are against the payment of a poll tax, then that part of this section, which provides for the levying of a poll tax shall no longer be in force in such town or district.

(1) **CONSTABLE'S DUTY HAVING EXECUTION FOR POLL TAX.]** The constable to whom such execution shall be delivered shall forthwith collect the moneys therein mentioned. He shall pay the money so collected, when collected, to the justice of the peace who issued the execution, who is hereby required to pay the same to the treasurer.

59. General tax levy for road and bridge purposes.] § 56. At a regular meeting to be held on the first Tuesday in September the board of highway commissioners in each town or road district shall annually determine and certify to the board of supervisors or board of county commissioners the amount necessary to be raised by taxation for the proper construction, maintenance and repair of roads and bridges in such town or road district. Such certificate shall be filed in the office of the county clerk, and by that official presented to the county board at their regular September meeting for their consideration. The amount so certified if approved by the county board, or such part thereof as the said board shall approve, shall be extended by the county clerk as taxes against the taxable property of such town or district: *Provided, however*, that the county clerk shall not extend against the taxable property of any town or road district a rate in excess of sixty-one (61) cents on each one hundred dollars valuation of the taxable property of the town or district, and if the amount of taxes approved by the county board shall be in excess of such rate it shall be the duty of the clerk to reduce the same to said rate of sixty-one cents upon each one hundred dollars of the assessed valuation of said town or district.

60. Copy of certificate to be preserved.] § 57. The commissioners of highways of each town or district in addition to certifying to the county board the amount necessary to be raised by said

town or district for road and bridge purposes therein, shall also within the dates aforesaid make out and deliver to the town or district clerk a copy of such certificate to be kept on file by such clerk for the inspection of the inhabitants of such town or district: *Provided, however,* that a failure to file such copy shall not affect the validity of the certificate filed with the county clerk, or of the tax levied pursuant thereto: *Provided, further,* that the town or district clerk shall not certify levies of road and bridge taxes to the county clerk.

61. Damages for laying out roads, etc.—Tax levy for.] § 58. When damages have been agreed upon, allowed or awarded for laying out, widening, altering or vacating roads or for ditching to drain roads, the amounts of such damages, not to exceed for any one year twenty cents on each one hundred dollars of the taxable property of the town or district shall be included in the first succeeding tax levy, provided for in section 56 of this Act, and be in addition to the levy for road and bridge purposes; and when collected, shall constitute and be held by the treasurer of the road and bridge fund as a separate fund to be paid out to the parties entitled to receive the same. It shall be the duty of the commissioners of highways at the time of certifying the general tax levy for road and bridge purposes within their town or district to include and separately specify in such certificate the amount necessary to be raised by taxation for the purpose of paying such damages. Upon the approval by the county board of the amount so certified, as provided in the preceding section, the county clerk shall extend the same against the taxable property of said town or district, provided the amount thus approved shall not be in excess of twenty cents on each one hundred dollars of the taxable property therein.

62. Tax rate—Extension and collection of taxes.] § 59. All items of tax levy of any town or district authorized by sections 56 and 58 of this Act shall be extended by the county clerk as one tax upon the collector's book and when collected shall be paid to the treasurer of the commissioners of highways by the collector as fast as the same is collected, except such rate per cent as shall be allowed for collecting the same: *Provided,* that one-half the tax required to be levied in section 56 and collected for road and bridge purposes, on the property lying within an incorporated village, town or city in which the streets and alleys are under the care of the corporation, shall be paid over to the treasurer of such village, town or city, to be appropriated to the improvement of roads, streets and bridges, either within or without said village, town or city, and within the township, under the direction of the corporate authorities of such village, town or city: *And, provided, further,* that when any of said tax is expended beyond the limits of said village, town or city, it

shall be with the consent of the highway commissioners of the township or road district.

63. Road damages—Orders out of tax to be levied.] § 60. Whenever damages have been allowed for roads or ditches, the commissioner of highways may draw orders on the treasurer, payable only out of the tax to be levied for such roads or ditches, when the money shall be collected or received, to be given to persons damaged.

64. Bonds may be issued by vote of special town or district meeting to build bridge, etc.] § 61. When the highway commissioners desire to expend on any bridge or other distinct and expensive work on the road, a greater sum of money than is available to them by other means, the said commissioners may call a special town or district election to vote on the proposition, which shall be clearly stated in the petition substantially as follows: "To borrow \$. to construct or repair (describe the bridge or other work)." Upon determining to call such election the highway commissioners shall order the town or district clerk, by an instrument in writing to be signed by them, to post up in ten of the most public places in said town or district, notices of such special town or district meeting; which notice shall state the object, time and place of meeting, the maximum sum to be borrowed, and the manner in which the voting is to be had, which shall invariably be by ballot, and shall be "For borrowing money to (here define the purpose)," or "Against borrowing money to (here define the purpose)." The special town or district election shall be held at the place of the last annual town or district meeting or election by giving at least ten days' notice, and returns thereof made in the same manner as other special town or district elections are now, or may hereafter be provided by law; and if it shall appear that a majority of the legal voters voting at said election shall be in favor of said proposition the said commissioners of highways and town or district clerk, as the case may be, shall issue from time to time, as the work progresses, a sufficient amount in the aggregate of the bonds of said town or district for the purpose of building such bridge, or other distinct and expensive work, said bonds to be of such denominations, bear such rate of interest, not exceeding six per cent, upon such time, and be disposed of as the necessities and conveniences of said town or district officers require: *Provided*, that said bonds shall not be sold or disposed of for less than their par value, and said town or district shall provide for the payment of such bonds by appropriate taxation.

65. Road and bridge money—How paid.] § 62. All road and bridge moneys of any town or road district shall be held by the treasurer of the road and bridge fund subject to the order of the commissioners of highways.

SUBDIVISION IV.

Provisions Specially Applicable to Bridges and Improvements Constructed or Repaired at the Joint Expense of Two Adjoining Towns or Districts.

66. Bridges built by two towns or districts.
67. Contracts by commissioners of adjoining towns or districts.
68. Approaches to bridges on or near town or district lines.
69. When commissioners of adjoining towns or districts refuse to enter into joint contract, bridge may be built and bonds issued by vote of town meeting or district election.
70. Suit on joint contract.

66. Bridges built by two towns or districts.] § 63. Bridges over streams which divide towns or districts and bridges over streams on roads on town or district lines, and bridges within eighty rods of town or district lines over streams on roads extending from one town or district into another town or district and crossing town or district lines, shall be built and repaired at the expense of such towns or districts: *Provided*, that the expense of building and maintaining any bridge over a stream near town or district lines in which both are interested and where the cost thereof is less than \$5,000, shall be borne by both towns or districts in such portion as shall be just and equitable between said towns or districts, taking into consideration the taxable property in each, the location of the bridge, and the advantage of each, to be determined by the commissioners in making contracts for the same, as provided for in section 64 of this Act.

67. Contracts by commissioners of adjoining towns or districts.] § 64. For the purpose of building or keeping in repair such bridge or bridges, it shall be lawful for the commissioners of such adjoining towns, or districts, whether they be in the same or different counties, to enter into joint contracts, and such contracts may be enforced in law or equity against such commissioners jointly, the same as if entered into by individuals, and such commissioners may be proceeded against jointly by any parties interested in such bridge or bridges, for any neglect of duty in reference to such bridge or bridges, or for any damage growing out of such neglect.

68. Approaches to bridges on or near town or district lines.] § 65. Approaches to all bridges built and constructed under and by virtue of the two preceding sections, shall be built, constructed and maintained by the respective towns or districts within which such approach or approaches may be located, and all approaches to any and all such bridges have heretofore been built and constructed jointly by two or more districts or towns shall be maintained by the

respective districts or towns within which such approach or approaches are now located.

69. When commissioners of adjoining towns or districts refuse to enter into joint contract, bridge may be built and bonds issued by vote of town meeting or district election.] § 66. Whenever the commissioners of either of such adjoining towns or adjoining districts, shall refuse to enter into such joint contracts to build and maintain such bridge or bridges, the commissioners of the other town or district may submit such question to the annual district election or town meeting or call a special district election or town meeting to vote upon the proposition as to whether such district or town shall proceed to build and maintain such bridge or bridges at its own expense. If such proposed bridge shall require a greater sum of money to complete it than is available to the commissioners by other means, they may also submit the proposition to such annual or special district election or annual or special town meeting, to borrow money to build such bridge. The voting shall be by ballot, and if simply the question as to the building of the bridge is submitted, if the voter desires to vote for building the bridge, his ballot shall state "to build bridge," and if he desires to vote against the proposition, his ballot shall state "against the proposition to build bridge." If the proposition to borrow money to build such bridge shall be included in the notice the maximum amount to be borrowed shall be stated in the same, and the voter desiring to vote affirmatively shall state on his ballot "to build bridge and to borrow money to construct the same;" and if he desires to vote negatively, his ballot shall state "against the proposition to build bridge and to borrow money to construct the same." Such special election shall be called and held in the same manner as is provided in section 61 of this Act. If the proposition to build such bridge shall receive a majority of all the votes cast at such election or meeting the commissioners shall then have the power to contract for the building of such bridge and approaches thereto, the same as if the bridge was entirely located in such district or town, and shall have the power to acquire by purchase, lease or gift, any private bridge already built, suited to the purpose, or any land upon which to build the approaches, or may use for the purpose of such approaches any public highway, that may lead to the bank of the stream where said bridge is to be built on either side of said stream, whether such highway may be within the limits of said town or district or county or not. If the proposition to build such bridge and borrow money to build the same shall receive a majority of the votes cast at such special or annual election or meeting, the town or district clerk, under the direction of the commissioners, shall issue from time to time, as the work

progresses, a sufficient amount in the aggregate of the bonds of said town or district for the purpose of building such bridge and the approaches thereto, or to purchase any private bridge already built, as the case may be, said bonds to be of such denominations, bear such rate of interest, not exceeding eight per cent, upon such time, and be disposed of as the necessities and conveniences of said commissioners may require. Such bonds shall not be sold for less than their par value, and such town or district shall provide for the payment of such bonds and interest by appropriate taxation.

70. Suit on joint contract.] § 67. If the commissioners of either of such towns or districts, after reasonable notice in writing from the commissioners of any other such towns or districts, shall neglect or refuse to build or repair any such bridge when any contract or agreement has been made in regard to the same, it shall be lawful for the commissioners so giving notice to build or repair the same, to recover, by suit, one-half (or such amount as shall have been agreed upon) of the expense of so building or repairing such bridge, with costs of suit and interest from time of the completion thereof, from the town or district so neglecting or refusing.

SUBDIVISION V.

THE LETTING OF CONTRACTS.

- 71. Contract of single town or district.
- 72. Contracts for improvements to be constructed by two towns or districts.
- 73. Contractor to furnish bond.
- 74. When contracts made payable.
- 75. In letting contracts, etc., commissioners must not have any pecuniary interest.

71. Contracts of single town or district.] § 68. The commissioners of highways in each town or district is hereby authorized to contract for the construction and repairing of roads and bridges lying wholly within the limits of his [their] town or district; the cost whereof does not exceed \$200.00. When any contract shall be for a sum in excess of \$200.00, the said commissioners shall not let the same without the approval of the county superintendent of highways. The county superintendent shall keep a record of all contracts approved by him.

72. Contracts for improvements to be constructed by two towns or districts.] § 69. Contracts for constructing and repairing roads and bridges on town or district lines, or across streams on towns or district lines, shall be let by the commissioners of the two towns or districts who shall meet and act together when taking action upon the letting of such contracts for the construction or re-

pair of such roads and bridges, or acceptance of the work. When such contracts are for the expenditure of a sum exceeding \$200.00 they shall not let the same without the approval of the county superintendent as provided in the preceding section.

73. Contractor to furnish bond.] § 70. No contract so made either at public or private letting shall be considered as let unless the contractor shall, within ten days after the letting, enter into contract and file a bond with two good and sufficient sureties with the commissioners, in the penal sum of double the amount of the contract, payable to the commissioners of the town or district, upon failure to comply with the conditions of his or their contract.

74. When contracts made payable.] § 71. All contracts for the construction or repair of roads, or building or repairing bridges shall be made payable as soon as the work on said contract is completed and accepted by the commissioners of highways.

75. In letting contracts, etc., commissioners must not have any pecuniary interest.] § 72. In letting contracts, employing labor, or in purchasing tools, machinery or materials, neither the highway commissioners nor the county superintendent of highways shall have, directly or indirectly, any personal pecuniary interest therewith.

SUBDIVISION VI.

LAYING OUT, ALTERING, VACATING, WIDENING ROADS.

76. Width of roads.
77. Reducing width of roads.
78. Altering, widening, vacating and laying out roads—petition.
79. Hearing on petition—notice—preliminary order.
80. Appeal.
81. Surveys ordered.
82. Damages to be determined.
83. Damages may be agreed upon.
84. Inducements may be offered.
85. Summoning jury to assess damages—summons to owners.
86. If owner infant, etc., how served.
87. Notice to non-resident owners—continuance.
88. Manner of selecting jury—challenge.
89. Oath to jury—trial to be conducted as in other civil cases.
90. Trial—verdict—judgment—damages—benefits.
91. Appeal.
92. Costs of appeal—appeal bond.
93. Final order of highway commissioners or county superintendent of highways.
94. Appeal from final commissioners' order.
95. Effect of final order.
96. Proceedings subsequent to final order,

97. Records of town or district clerk—evidence—effect of same.
98. Limitations of time to open.
99. Removal of fences—notice.
100. Crops—removal of.
101. Private roads.
102. Roads on town or district and county lines, etc.
103. Commissioners to allot all or part of road to each town or district—also to divide damages and expenses—arbitration.
104. Roads heretofore laid out on county or district or town lines.
105. State line roads.
106. Where road proposed across or alongside railroad—notice.
107. Notices on railroad companies—how served.

76. Width of roads.] § 73. All public roads established under the provision of this Act shall be of the standard width of forty feet.

77. Reducing width of roads.] § 74. The commissioners of highways of any town or road district may reduce the width of any existing public road within any town or road district to a width of forty feet when the same is petitioned for by a majority of the land owners along the line of said road, within said town or district. When possible the land so vacated by reducing the width of the road shall be taken equally from both sides of the public highway. In cases of natural obstructions on one side of the public highway or where the said road extends along the right-of-way of any railroad, river or canal, the commissioners are authorized to reduce the width of the road on one side only.

78. Altering, widening, vacating and laying out roads—Petition.] § 75. Existing roads may be altered, vacated or widened and new roads may be laid out in the manner herein provided for. Any number of land owners residing in any town or road district within two miles of the road to be altered, widened, vacated or laid out, or two-thirds of such land owners, may file a petition with the commissioners of highways of such town or district, praying for the altering, widening, vacation or laying out of said roads. Said petition shall set forth a description of the road and what part is to be altered, widened or vacated, and if for a new road the names of the owners of lands, if known, and if not known it shall so state, over which the road is to pass, the points at or near which it is to commence, its general course, and the place at or near which it is to terminate.

79. Hearing on petition—Notice—Preliminary order.] § 76. Whenever the commissioners shall receive any such petition they shall fix a time when and a place where they will examine the route of such road and hear reasons for or against the altering, widening, vacating or laying out of the same, and they shall give at least ten

days' notice of the time and place of such examination and hearing by posting notices in three of the most public places in the town or district in the vicinity of the road to be widened, altered, vacated or laid out. The commissioners may, by public announcement, and by the posting of a notice at the time and place named for the first hearing, adjourn the said hearing from time to time, but not for a longer period than ten days in all; and shall at such meeting, or such adjourned meeting, decide and publicly announce whether they shall grant or refuse the prayer of the petition and shall endorse upon or annex to the petition a brief memorandum of such decision, to be signed by said commissioners and file within five days thereafter in the office of the town or district clerk.

80. Appeal.] § 77. In case the commissioners of highways shall deny the prayer of the petition, the petitioners may appeal from such decision to the county superintendent of highways by joining in a notice of such appeal and filing the same in the office of the town or district clerk within ten days after the date of the decision appealed from. The clerk shall thereupon transmit the original petition for the altering, widening, vacating or laying out of such road, together with the said notice of appeal to the county superintendent of highways. Upon receipt thereof the said county superintendent of highways shall thereupon fix a time and place for a public hearing thereof, giving notice thereof and render his decision thereon in the manner hereinbefore provided in the case of the hearing upon said petition by the commissioners of highways of the town or district. Upon rendering his decision, the said superintendent of highways shall likewise endorse on said petition a memorandum of his decision and shall file the same in the office of the town or district clerk. Such decision of the commissioners of highways, or upon appeal such order of the county superintendent of highways, shall be regarded as a preliminary decision upon the advisability of the proposed improvement, and shall be subject to revocation in the manner hereinafter provided.

81. Surveys ordered.] § 78. If the commissioners of highways, or upon appeal from his [their] decision, the county superintendent of highways, shall enter a preliminary order as aforesaid that the prayer of the petitioner should be granted, the said highway commissioners or county superintendent of highways, as the case may be, shall cause a survey and plat of such road to be made by a competent surveyor who shall report such survey and plat to said commissioners of highways or county superintendent, as the case may be, giving the courses and distances and specifying the land over which said road is to pass; in which he may make such changes between the termini of the road described in the petition as the convenience and interest of the public in his judgment may require.

Upon the petition of twelve land owners residing in the town or district where the road is situated, it shall be the duty of the said commissioners of highways or county superintendents, as the case may be, within a reasonable time to employ a competent surveyor and have any road designated in such petition to be once [re]surveyed.

82. Damages to be determined.] § 79. Whenever the commissioners of highways of any town or road district or upon appeal from their decision, the county superintendent of highways has entered a preliminary order as aforesaid for the establishment, vacation, widening or alteration of a road, and a survey therefor has been completed as hereinbefore provided, proceedings shall next be taken to fix the damages which will be sustained by the adjoining land owners by reason of such alteration, vacation, widening or laying out. In case such preliminary order was entered by the commissioners of highways, they shall act for the town or district in all matters relating to the fixing of damages, as well as the surveying of such road. But in case such order was entered by the county superintendent of highways on appeal, as aforesaid, the said county superintendent shall represent the said town or district in such matters.

83. Damages may be agreed upon.] § 80. The damages sustained by the owner or owners of land by reason of the establishment, alteration, widening or vacation, as aforesaid, may be agreed upon by the owners of such lands if competent to contract, and the commissioners of highways or county superintendent, as the case may be. Such damages may also be released by such owners, and in such case the agreement or release shall be in writing, the same shall be filed and recorded with the copy of the order establishing, altering, widening or vacating such road in the office of the town or district clerk, and shall be a perpetual bar against such owners, their grantees and assigns for all further claims for such damages.

84. Inducements may be offered.] § 81. Any person or persons interested in the establishment, alteration, widening or vacation of any public road in this State, are hereby authorized to offer inducements to the commissioners of highways or county superintendent of highways, as the case may be, for the establishment, alteration, widening or vacation of any such road, by entering into contract with said commissioners or county superintendent, conditioned upon such establishment, alteration, widening or vacation, to pay money or other valuable thing to the town or district for the benefit of the road or bridge funds of the same; or to perform any labor, or construct any road, bridge or culvert on any road which said person or persons desire to be established, widened or altered. Any such contracts in writing made with said commissioners of highways or county superintendents shall be deemed good and valid in law and may be enforced by said commissioners or superintendent,

85. Summoning jury to assess damages—Summons to owners.] § 82. In case such damages are not released or agreed upon as in the preceding section specified, the commissioners, or in case of appeal the county superintendent of highways, shall, within ten days from the date of the meeting at which it was decided to grant the prayer of the petition, make a certificate that he is about to establish, widen, vacate, or alter a public road, describing such road, vacation, widening or alteration, and the land over or on which such road is to be established, altered, widened or vacated, and naming the owners of such lands, if known, and if not known, stating the fact and asking for a jury to assess the damages of such owners, and shall present such certificate to some justice of the peace of the county, who, on receipt of the same, shall, within five days, issue a summons against the land owners concerned, which summons shall be in the following form as nearly as the case will admit, viz:

86. If owner infant, etc., how served.] § 83. If any such owner is an infant, such summons shall be served by delivering a copy to the infant and its guardian, if any; if no guardian, the person with whom he or she resides. If any owner is a lunatic or habitual drunkard, having a conservator, or insane, by delivering a copy to his conservator, if any.

87. Notice to non-resident owners—Continuance.] § 84. In case it shall appear, either from the certificate of the commissioners or county superintendent of highways, the affidavit of any person, or the return of any officer to whom the notice may be delivered for service, that there are non-resident or unknown owner or owners who cannot be found and served within the county, such justice shall also cause notice to be delivered to the occupant of such lands, and the contents and nature thereof to be made known to such occupant and also to be posted in three of the most public places in the vicinity of such proposed road or alteration, at least ten days before the time fixed in the summons for hearing proof of damages, stating the time and place, as stated in said summons, and describing the road to be established or altered, and the lands for which damages are to be assessed; and in case service is made upon any owner by posting notices as above provided, the justice shall continue said hearing for a period not exceeding twelve days.

88. Manner of selecting jury—Challenge.] § 85. Such justice shall also forthwith issue a venire directed to any constable of the county, to summon six persons having the qualifications of jurors to appear at such time and place as may be designated for the proving of such damages, whose competency shall be determined the same as in other civil cases before justices of the peace. Either party to the case shall have the same right of challenge as in other civil cases; and any deficiency in the number of jurors, from whatever cause, shall be supplied by summoning other persons residing in such county: *Provided*, that not more than one-half of such jury shall be residents of the town or district liable to pay the damages assessed in the case: *Provided, further*, that changes of venue may be granted, if applied for before the commencement of the trial, in the same manner as in other civil causes before justices of the peace.

89. Oath to jury—Trial to be conducted as in other civil cases.] § 86. The jury shall appear before and be sworn by such justice faithfully and impartially to assess the damages of each of the owners specified in such certificate, or those of them whose claims are then to be adjusted, according to law, to the best of their judgment and understanding; and all parties in interest shall be entitled to subpoenas and other writs and papers, and the trial shall be conducted as in other civil cases.

90. Trial—Verdict—Judgment damages—Benefits.] § 87. The case shall be entitled, "Town of (or road district No.) vs." (whoever may be summoned as land owners), and the jury shall hear such lawful evidence touching the question of such damages as may be presented to them; and they shall also, on request of the commissioners of highways or county superintendent of highways, as the case may be, or owners of lands whose

damages are to be determined, in a body visit and examine the proposed location, alteration, widening or vacation of such road and the lands to be taken or affected thereby, and make a written verdict specifying the amount of damages, if any, which every such owner shall recover, and return the same to such justice, to be by him entered on his docket in the nature of a judgment: *Provided*, that in estimating the damages, except damages to land actually taken for a road, the jury may consider the benefits conferred; but no benefits enjoyed in common by the owners of surrounding property shall be considered in estimating damages.

91. Appeal.] § 88. Any person or persons interested in the verdict of any jury in assessing damages in opening, altering or vacating any road, may appeal from such decision to the county or circuit court within ten days after such decision has been rendered, by filing a written petition with the justice of the peace, from whose decision they desire to appeal, asking for an appeal and stating on what grounds such appeal is taken.

92. Costs of appeal—Appeal bond.] § 89. Any parties taking appeal from the verdict of the jury as aforesaid, shall file a sufficient bond with the justice of the peace, before taking such appeal, conditioned for the payment of the cost of such appeal in case the verdict of the jury is in all things sustained or the appeal dismissed; if the verdict of the jury shall not be sustained, the district shall pay the costs of such appeal. When such appeal is taken from the verdict of the jury called by the justice of the peace to assess damages as aforesaid, and when the commissioners of highways or county superintendent, as the case may be, shall be unable to agree with the owners of lands in regard to such damages, then all proceedings shall cease until the amount of damages is settled by the county or circuit court on appeal as aforesaid.

93. Final order of highway commissioners or county superintendent of highways.] § 90. Within twenty days after the damages likely to be sustained by reason of the proposed laying out, alteration, widening or vacation of any road shall have been finally ascertained, either by agreement of the parties or by trial in a court of the justice of the peace, or on appeal to the county or circuit court, or within twenty days after such damages may have been released, as aforesaid, the commissioners of highways shall hold a public hearing at which they shall hear and consider reasons for or against the proposed laying out, widening, alteration or vacation of such road, and at which time and place they shall publicly announce their final decision relative thereto. The commissioner[s] of highways shall give public notice of such public hearing by posting notices thereof

in at least three of the most public places in the town or district for at least five days prior thereto. At such time and place the commissioners of highways shall determine upon the advisability of such proposed laying out, widening, alteration or vacation of such road and shall make an order for the same and shall within five days thereafter file such order in the office of the town or district clerk.

94. Appeal from final commissioners' order.] § 91. From such order of the commissioners of highways finally determining the advisability of such proposed laying out, alteration, vacation or widening of any road, any person interested therein may appeal to the county superintendent of highways by filing a notice of such appeal in the office of the town or district clerk within ten days of the date of filing the decision appealed from. Thereupon such clerk shall at once transmit all papers relating to such proposed laying out, alteration, vacation or widening of such road to the county superintendent of highways, who shall within twenty days after the receipt of the same, hold a public hearing within such town or district to finally determine upon the laying out, vacation, widening or alteration of such road. Such hearing shall be upon such notice and conducted in like manner as the hearing before the commissioners of highways relative to such final decision and from which appeal has been taken. The final order of the county superintendent of highways, relative to such proposed laying out, alteration, widening or vacation of such roads shall be filed with the town or district clerk within five days from the date of such public hearing.

95. Effect of final order.] § 92. In case the commissioners of highways, or upon appeal from their decision the county superintendent of highways, shall finally determine as aforesaid against the advisability of the proposed laying out, alteration, widening or vacation of such road, such order shall have the effect to annul and revoke all proceedings and assessments, releases and agreements in respect to damages growing out of the proceedings upon the petition aforesaid. In case the commissioners or county superintendent shall not revoke such prior proceedings, he or they shall make an order to be signed by him or them, declaring such road to be altered, widened, vacated or laid out as a public highway and which order shall contain or have annexed thereto a definite description of the line of such road, together with the plat thereof. The commissioners of highways or county superintendents, as the case may be, shall file within five days from the date of his final order, cause the same, together with the report of the surveyor, the petition and the releases, agreements or assessments in respect to damages, to be deposited and filed in the office of the town or district clerk; who shall note upon such order the date of such filing. It shall be the duty

of such clerk to record such order, together with the plat of the surveyor in a proper book to be kept for that purpose.

96. Proceedings subsequent to final order.] § 93. After it has been finally determined that a road shall be laid out, widened, altered or vacated, either by the commissioners of highways, or upon appeal, by the county superintendent of highways, all proceedings subsequent thereto on behalf of the town or district shall be taken by the commissioners of highways thereof as hereinafter provided. And such commissioners of highways in such cases are hereby authorized and empowered to resort to all necessary proceedings not inconsistent with the provisions of this Act to secure the laying out, widening, alteration or vacation of any such road.

97. Records of town or district clerk—Evidence—Effect of same.] § 94. The records of the town or district clerk, or a certified copy of such record and papers, relating to the establishment, location, alteration, widening or vacation of any road shall be *prima facie* evidence in all cases that all the necessary antecedent provisions have been complied with, and that the action of the commissioners or other persons and officers in regard thereto, was regular in all respects.

98. Limitations of time to open.] § 95. All roads laid out as herein provided shall be opened within two years from the time of laying out the same. If the damages resulting from the establishing of such roads shall not be paid within ninety days from the time of the final determination to open the same as aforesaid, such new roads shall be deemed to be vacated.

99. Removal of fences—Notice.] § 96. Whenever a public road is ordered to be established or altered, according to the provisions of this Act, which road shall pass through or on enclosed land, the commissioners of highways shall give the owner or occupant of such land sixty days notice in writing, to remove the fences. If such owner or occupant does not remove the fence or fences within sixty days after such notice, the commissioners shall have the same removed, and direct the road to be opened and worked; the owner of such premises shall pay all necessary costs of the removal, and the same may be recovered by the commissioners of highways in any court of competent jurisdiction.

100. Crops—Removal of.] § 97. When any road opened according to the provisions of this subdivision shall pass over enclosed lands, the owners of such lands shall have a reasonable time, not exceeding eight months, to be designated by the commissioners of highways, to harvest crops and remove fences which may be on such lands before such road or cartway shall be opened.

101. Private roads.] § 98. Roads for private and public use of the width of three rods or less, may be laid out from one dwelling or plantation of an individual to any public road, or from one public road to another, or from a lot of land to a public road, or from a lot of land to a public waterway, on petition to the commissioners by any person directly interested. Upon receiving such petition, proceedings shall be had respecting the laying out of such road as in the case of public roads. In case the commissioners of highways or upon appeal, the county superintendent of highways, shall enter a preliminary order for the laying out of such road, the said highway officer or officers making such preliminary order shall, if possible, and the parties are competent to contract, agree upon the total amount of damages, together with the portion thereof to be paid by the town or district, as well as by each of the land owners benefited by such private road. In case such damages cannot be determined or apportioned by agreement, the same shall be fixed as in the case of public roads. The amount of such damages shall be paid by the persons benefited thereby, to the extent and in proportion that they are benefited as determined and declared by the court. The remainder of the amount of damages over and above that to be paid by the parties aforesaid, shall be paid by the town or district as in other cases. The amount of damages to be paid by individuals shall be paid to the parties entitled thereto, before the road shall be opened for use. In all other respects the provisions of this Act relative to the opening, vacation, alteration or widening of public roads shall be applicable also to the laying out, alteration, widening or vacation of private roads.

102. Roads on town or district and county lines, etc.] § 99. Public roads may be established, altered, widened or vacated on county or township or district lines, or from one township or district to another, and in a case a railroad right of way or stream of water joins the boundary line of such county line, then along the line of such railroad right of way or stream of water, in the same manner as other public roads, except that in such cases, a copy of the petition shall be posted up in and presented to the commissioners of each town or district interested; said petition to be as in other cases, and signed by not less than twelve or two-thirds of the owners of land residing therein, in either township or district or county within two miles of the road to be so altered, widened, vacated, located or laid out. Whereupon it shall be the duty of the commissioners of the several towns or districts to meet and act together, in the same time and manner as in other cases, in considering the petition, viewing the premises, adjusting damages, and making all orders in reference to such proposed road, alteration, widening or vacation, and a copy

of all final orders and plats and papers shall be filed and recorded in each of the counties and towns or districts interested. In case the said commissioners are unable to agree, the county superintendent of highways shall act as arbitrator between them in case the towns or districts shall lie within the same county, and if in different counties the State Highway Commission or any person designated by him, shall so act. All appeals hereinbefore provided for may likewise to be taken to the county superintendent of highways, or in case the towns or districts shall lie in two or more counties, to the State Highway Commission.

103. Commissioners to allot all or part of road to each town or district—Also to divide damages and expenses—Arbitration.]

§ 100. The commissioners shall also, in case a new road is established, allot to each of such towns or districts the part of such road which each of such towns or districts shall open and keep in repair, and the part so allotted shall be considered as wholly belonging to such town or district. They shall also divide the expenses and damages which may accrue from such location, widening or alteration, and if they cannot agree, they shall refer the matter to the county superintendent of highways or in case the towns or districts shall lie in two or more counties, to the State Highway Commission, whose decision shall be final.

104. Roads heretofore laid out on county or district or town lines.] § 101. All roads heretofore or hereafter laid out upon town or district or county lines shall be divided, allotted and kept in repair in the manner as hereinbefore directed. Any public road that is or shall be laid out on any county or town or district line, and in case a railroad right of way or stream of water forms the boundary line of town or district or county, or crowds the public road off from such town or district or county, then the road alongside such railroad right of way or stream of water, shall be held to be a road on a county or town or district line, although owing to the topography of the ground along such county or town or district line, or at the crossing of any stream of water the proper authorities in establishing or locating such road may have located a portion of the same to one side of such county or district or town line or railroad right of way, or stream of water, and the expenses of keeping in repair such road shall be assessed by each town or district or county interested.

105. State line roads.] § 102. Roads may be laid out and opened upon the line between this and any adjoining state, as provided in the preceding sections, whenever the laws of such adjoining state shall be applicable.

106. Where road proposed across or alongside railroad—Notice.] § 103. In addition to the notices now required by law

in proceedings for laying out, locating or opening of public roads, similar notices shall be served on any railroad company across or alongside of whose railroad it may be proposed to locate a public road: *Provided*, that this Act shall not apply to the proceedings for opening streets in towns or cities.

107. Notices on railroad companies—How served.] § 104. The notices as provided by this Act shall be served by delivering a copy thereof to the station agent of any such railroad company nearest to the proposed location of such projected public roads.

SUBDIVISION VII.

Repair and Maintenance of Roads and Bridges.

108. How roads to be graded—walk—penalty for driving on crossings.

109. Sidewalks in unincorporated villages.

110. A. Road drags—authority and use. B. Obstructing drainage—travel regulated.

108. How roads to be graded—Walk—Penalty for driving on crossings.] § 105. In grading roads, wherever practicable, it shall be done so as to leave not less than one-tenth of the width of the road on each side for a sidewalk; and the space between these points shall be made a regular oval grade so that the entire space can be used for traveling purposes; and it shall be unlawful to ride or drive on such walk; and any person so offending shall be subject to a fine of \$1.00 for each offense. Grading shall be done before the first of September in each year. Corner stones marking sectional or other corners shall not be disturbed, except to so grade the road that these, if in the line of travel shall not rise above the surface, and corner stakes shall be replaced by good and substantial stones. In grading public roads, if a ditch is made at the junction of roads, or at the entrance of gates or other openings of adjoining premises, the road authorities shall construct good and sufficient culverts, or other convenient crossings.

109. Sidewalks in unincorporated villages.] § 106. Highway commissioners are hereby authorized to build sidewalks in unincorporated villages out of any delinquent road tax belonging to the town or road district in which such village is located.

110. (A) Road drags—Authority and use.] § 107. The commissioners of highways in the several towns or districts and the county boards in the counties of this State are hereby authorized to have earth roads dragged at all seasons of the year whenever the surface of the roads becomes rough so they will not properly shed

the water which falls upon them; and they may contract, a preference to be given adjoining land owners or tenants, to have a given piece of road dragged at a rate not to exceed one dollar (\$1.00) per mile for each time dragged, if such work is done during the months of December, January, February or March, and not to exceed a rate of seventy-five (75) cents per mile for each time dragged, if such work is done during other months of the year than aforesaid: *Provided*, that the width required by the highway commissioners to be dragged shall be not less than fourteen (14) feet, if the width of roadway will permit: *Provided, also*, that the dragging is done as nearly as practicable in accordance with the instructions of the highway commissioners of the town or district.

(B) ORSTRUCTIN DRAINAGE.] It shall be unlawful for any person or persons to place loose earth, weeds, sods, or other vegetable matter on the portion of a road which has been dragged and so maintained in good condition, or to place any material in such a manner as to interfere with the free flow of water from the dragged portion of the road to the side gutters or ditches: *Provided*, that this restriction shall not apply to deposits of earth or other material that may be made by the authority of the proper road officials, if necessary for filling or raising the elevation of a given section of road or other necessary construction work.

TRAVEL REGULATED.] It shall also be unlawful for any person or persons to drive or cause to be driven a vehicle of any description in or upon any portion of the highway immediately after the same has been dragged and before such portion of the highway shall have partially dried out or frozen: *Provided*, that nothing in this section shall apply in those instances where it is impossible to drive with safety at one side of said dragged portion of the road, or where a vehicle does not make a rut on such dragged portion of the road, injurious to the work accomplished by use of the road drag, or where a vehicle does not make a rut nearer than nine (9) feet from the center of the dragged portion of the road.

SUBDIVISION VIII.

Gravel, Rock and Macadam—Hard Roads.

111. Petition for road—notice—election—vote—rate per cent.
112. Ballots.
113. Duty of commissioners—tax donations.
114. Levy and collection of taxes.
115. Borrowing money.
116. Duty of treasurer.
117. Tax collector—duty—commission.
118. Surveys, estimates, etc.
119. Plans—bids—notice.

120. Plans and specifications—what to contain.
121. Commisisoners—opening bids—failure to give bond.
122. May reject bids.
123. Estimate—payment of contractor.
124. Record—report—settlement.
125. Construction of road—material.
126. Commissioners may take materials.
127. Compensation of commissioners and employes.
128. Extension of road within city or village.
129. Powers of county board.
130. Ballots—election—tax.
131. Roads to be free.
132. Surplus fund.

111. Petition for road—Notice—Election—Vote—Rate per cent.] § 108. On the petition of twenty-five per cent of the land owners who are legal voters of any township to the town clerk thereof, in counties under township organization or road districts in counties not under township organization, to the district clerk, he shall, when giving notice of the time and place for holding the next annual town meeting or road district election, also give notice that a vote will be taken at said election or meeting for or against an annual tax not to exceed one dollar on each one hundred dollars assessed valuation of all the taxable property, including railroads in the township or road district, for the purpose of constructing and maintaining gravel, rock, macadam or other hard roads. Said petition shall state the location and route of the proposed road or roads, and shall also state the annual rate per cent not exceeding one dollar on each one hundred dollars, and the number of years not exceeding five, for which said tax shall be levied. If in any such petition a special election shall be requested for such purposes it shall be called in the manner provided for calling special elections in section 112 of this Act.

112. Ballots.] § 109. The ballots at said election shall be substantially in the following form:

For special tax for gravel, rock, macadam or other hard roads.	Yes	
	No	

113. Duty of commissioners—Tax donations.] § 110. If a majority of all the ballots cast at said election on said proposition shall be in favor of said special tax, then it shall be the duty of the commissioner of highways of the township or road district to levy an annual tax in accordance with said vote and certify the same to the county clerk. He shall also cause a copy of such certificate of

levy to be filed in the office of the town or district clerk as provided in section 57 of this Act. The county clerk shall cause such levy, thus certified to him to be extended on the tax books for the current year and for each succeeding year, as stated in the certificate so filed with him: *Provided*, that the length of time for which the special tax levy shall continue shall not exceed five years. The commissioner may also receive donations in money, labor, materials or other valuable things, to aid in the construction of said road.

114. Levy and collection of tax.] § 111. The county clerk, when making out the tax books for the State and county tax for the collector, shall in each year for the number of years stated in such certificate extend the special tax in separate columns against each tax payer's name or taxable property, as other taxes are extended, which shall be collected the same as State and county taxes, and known as the permanent road fund.

115. Borrowing money.] § 112. On the petition of the commissioners of highways, in his official capacity, and of one hundred of the free holders of any town or district (or where there may be less than two hundred such freeholders, then a majority of them) to the town or district clerk requesting him, when giving notice of the time and place for holding the next annual town meeting or road district election, to also give notice that a vote will be taken at said election or meeting on the proposition, "For borrowing \$. (to construct or maintain gravel, rock, macadam or other roads, or to construct or repair any bridge or bridges, or to construct or to repair any other distinctive work on the road)," he shall, when giving notice of the time and place for holding the next annual town meeting or road district election, also give notice, that a vote will be taken at said election or meeting upon the proposition, "For borrowing \$. (to construct or maintain gravel, rock, macadam or other roads, or to construct or repair any bridge or bridges, or to construct or repair any other distinctive work on the road)."

If in any such petition a special election shall be requested for such purpose, it shall be called as follows:

Upon the filing of such petition the town or district clerk shall call such special town or district election by posting up in ten of the most public places in said town or district, at least ten days prior to the day fixed for said special town or district election, notice of such special town or district election, which notices shall state the filing of said petition, the time and place of said special election, and that a vote will be taken at said election or meeting upon the proposition, "For borrowing \$. (to construct or maintain gravel, rock, macadam, or other roads, or to construct or repair any bridge or bridges, or to construct or repair any other distinctive work on the road)," and the manner in which the voting is to be had.

Such special election shall be held at the place of the last annual town or district election, and returns thereof shall be made in the same manner as other special or district elections are now or may hereafter be provided by law.

The vote at such regular or special election shall invariably be by a separate ballot and shall be in the following form:

For borrowing \$. to construct or maintain gravel, rock, macadam or other roads.	Yes	
	No	

And if it shall appear that a majority of the legal voters voting at said election on said proposition voted in favor of said proposition, the commissioners of highways and the town or district clerk, as the case may be, shall issue (from time to time as the work progresses) a sufficient amount, in the aggregate, of the bonds of said town or district for the purpose of building and maintaining gravel, rock, macadam or other roads, or for the purpose of constructing or repairing such bridge or bridges, or for the purpose of constructing or repairing such other distinctive work on the road as the case may be. Said bonds to be of such denominations, bear such rate of interest, not exceeding five per cent, upon such time, and be disposed of as necessities and convenience of said town or district may require: *Provided*, that said bonds shall not be sold or disposed of either by sale or by payment to contractors for labor and materials for less than their par value; such bonds to be issued in not more than ten annual series; the first series of which shall mature not more than five years from the date thereof and each succeeding series in succeeding years thereafter. A register of all issues of said bonds shall be kept in the office of the county clerk of the county in which said township or district is located, showing the date, amount, rate of interest, maturity, and the purpose for which said bonds were issued, which information shall be furnished to the county clerk in writing by the town or district clerk, and it shall be the duty of such county clerk to extend annually against the property in said township or road district a tax sufficient to pay the interest of said bonds in each year prior to the maturity of such first series and thereafter he shall extend the tax in each year sufficient to pay each series as it matures, together with interest thereon and with the interest upon the unmatured bonds outstanding. Such bonds may be lithographed and the interest for each year evidenced by interest coupons thereto attached, which shall be signed by the same officers who executed by original or *fac-simile* signatures the bonds: *Provided, however*, that the amount, including the principal and in-

terest to be voted upon, shall not exceed the amount which can be raised during a period of five years by a levy of one dollar per year on each one hundred dollars of taxable property as taken for assessment purposes in such town or district; the proceeds of said bonds to be paid to the treasurer and to be disbursed by him upon the order of the commissioners of highways.

116. Duty of treasurer.] § 113. The treasurer of the road and bridge fund of any town or district before receiving any of said fund herein provided for, shall execute a good and sufficient bond, with two or more sureties, to be filed with the town clerk or district clerk, as the case may be, for the benefit of the town or district, in double the amount which will probably come into his hands by virtue of this subdivision of this Act.

117. Tax collector—Duty—Commission.] § 114. The tax, when collected, shall be paid to said treasurer as fast as collected, except such rate per cent as shall be allowed for collecting the same, and said tax shall be known and kept as the permanent road fund. The treasurer shall be allowed one per cent on all of said fund that comes into his hands.

118. Surveys, estimates, etc.] § 115. Whenever it shall be voted to construct gravel, rock, macadam or other hard roads in any township or district, it shall be the duty of the county superintendent of highways of the county in which said township is located to at once survey (or cause to be surveyed) the route of the road thus to be improved, and to prepare suitable maps, plans, specifications, and estimates of the cost of the proposed improvement. The county superintendent of highways shall divide the same into convenient sections, each of which shall be numbered. The county superintendent of highways, upon the completion of said maps, plans, specifications, and estimates, shall file one copy of the same with the town or district clerk of the township wherein the proposed road is to be constructed and one copy with the commissioners of highways of said township.

119. Plans—Bids—Notice.] § 116. When the plans and specifications are completed, the commissioners shall advertise for sealed bids for said work, by publishing a notice thereof for at least three weeks in some newspaper published in said township or road district. If there is no newspaper published therein, then in the newspaper published nearest said township or road district, and also by posting notices in at least ten of the most public places in said town or road district.

120. Plans and specifications—What to contain.] § 117. The plans and specifications shall provide for the grading of a road-bed of not less than 20 feet in width on the surface, and so con-

structed as to drain freely to the sides and with all necessary side and lateral ditches and tile drains, bridges and culverts, and a track laid with gravel, rock, macadam, or other hard and durable substance, not less than seven nor more than sixteen feet in width, and if constructed of gravel or broken stone, not less than ten inches thick in the center, and eight inches thick on the edges: *Provided, however,* this section shall be considered as directory only, and shall not prohibit the making of roads of different width or thickness, in the discretion of the commissioners.

121. Commissioners—Opening bids—Failure to give bond.]

§ 118. The commissioners shall appear at the time and place appointed, for the purpose of opening the bids and shall proceed to let the contract publicly to the lowest responsible bidder or bidders by sections, with proper specifications of the various kind of labor or material on each section, and bidders shall be required to separately state their bids for each class of work in such manner as the commissioners may provide, and each contractor shall be required to give bond with good and sufficient sureties for the performance of his contract, payable to the commissioners for the use and benefit of the town or district with the necessary specifications and stipulations on the part of the contractor entered therein: *Provided, however,* no contract in excess of the sum of two hundred dollars (\$200.00) shall be let by the commissioners of highways in any town or district without the approval of the county superintendent of highways. No commissioner shall be interested either directly or indirectly in any contract relating in any manner to said road.

122. May reject bids.] § 119. If the commissioners of highways shall be of the opinion that the bids are too high, they may reject the same. No contract shall be deemed as let unless the contractor shall, within ten days after the letting, enter into contract and file a bond with two good and sufficient sureties with the commissioners, in the penal sum of double the amount of the contract, payable to the commissioners of highways upon the failure to comply with the conditions of his or their contract.

123. Estimate—Payment of contractor.] § 120. The county superintendent of highways shall make estimates of the work done, and certify the same to the commissioners of highways of said township, not oftener than once in thirty days, as may have been provided in the contracts, and the said commissioners of highways shall then issue an order on the treasurer in favor of the contractor, reserving not less than 20 per cent of said estimates, to guarantee the completion of the contract. Upon the completion of the contract the commissioners and the county superintendent of highways shall make a thorough and complete examination and estimate of said

work, and, if found in accordance with the specifications of the contract, the commissioners, upon the certificate of the county superintendent of highways, shall issue his order on the treasurer for the full amount due the contractor.

124. Record—Report—Settlement.] § 121. The commissioners shall keep a full and accurate record of all their proceedings under this Act, and shall, upon the completion of the road, file with the town or district clerk all records, papers, plans, plats, estimates, specifications and contracts, and shall make a full report to, and settlement with the board of town auditors or district clerk as provided in section 50 of this Act. If the commissioners fail to make such settlement, the supervisor or board of county commissioners shall cause an action to be instituted against them in the corporate name of the township or road district to enforce such settlement.

125. Construction of road—material.] § 122. The commissioners and the county superintendent of highways may, in their discretion, cause the road to be constructed wholly of earth, and by a thorough system of tile and other drainage, when gravel, stone and other suitable hard materials can not be obtained at a cost within the means in the hands of the commissioners.

126. Commissioners may take materials.] § 123. The commissioners, for the purpose of constructing, maintaining or repairing gravel, rock, macadam or other hard roads, as provided in this subdivision and for procuring materials therefor, may enter upon lands of others, doing no more damage than the necessity of the case may require, and take therefrom such material as is necessary for the construction and repairing of said roads: *Provided*, that the commissioners of highways, their employees, or teams, shall not enter upon such lands for the purpose in this section stated, without having paid or tendered the amount of damage allowed or agreed upon: *Provided*, that the commissioners and the party or parties owning or controlling the lands to be entered upon, or from which material is to be taken, cannot agree as to the amount of damage or value of material, that the amount of damage shall be determined as provided for in the law for exercising the right of eminent domain.

127. Compensation of commissioners and employees.] § 124. The commissioners shall receive the same compensation for their services under this subdivision of this Act as for services under the common road law: *Provided, however*, they shall not receive benefit for both kinds of service on the same day. The assistants or employees shall receive such reasonable compensation as may be agreed upon. The commissioners shall be paid out of the road and bridge fund of the town or district. The other employees shall be paid by the commissioners out of the permanent road and bridge fund and none other.

128. Extension of road within city or village.] § 125. Whenever a special tax shall have been levied under the provisions of this subdivision of this Act, the commissioners of highways of any town or district may, by agreement with the city council or board of trustees of any city or village of less than 10,000 population, extend any road improved under the provisions of this subdivision within or through the corporate limits of such city or village: *Provided*, such extension within such city or village shall be of the same cost and kind of material as the road outside such city or village, to be paid for out of said special tax and after completion to be maintained by the municipal authorities of such city or village at the cost of such city or village.

129. Powers of county board.] § 126. The several county boards of counties are hereby vested with the same powers for constructing, repairing and maintaining gravel, rock, macadam or other hard roads in their respective counties as the commissioners of highways acting severally or together or with the several county superintendents of highways according to the provisions of this Act. The county board of any county may also assist any town or road district therein in the construction of a hard road under the provisions of this Act, to the extent of twenty-five per cent of the cost thereof: *Provided, however*, that the question of raising a special permanent road tax or of issuing bonds for the purposes set forth in this Act, shall first be submitted to the legal voters of the county, at any regular election for county officers, on the petition of one hundred land owners who are legal voters in said county, to the county clerk, previous to time of posting the notices for said county election, said petition and notices to designate the road or roads to be improved and number of years, not to exceed five, for which the tax shall be continued.

130. Ballots—Election—Tax.] § 127. The ballots to be used at elections provided for in the preceding section shall be in the form prescribed in section 109 of this Act. If a majority of all the ballots cast at said election shall be in favor of the special permanent road tax, it shall be the duty of the county board to direct the county clerk to extend such tax against all the taxable property, including railroads in said county, and proceed in the construction of the road or roads voted for in the same manner as provided for the guidance of commissioners of highways in their respective towns or districts.

131. Roads to be free.] § 128. All roads constructed under the provisions of this subdivision of this Act, either by towns or districts or counties shall be free for public travel and kept in repair by the proper authorities thereof.

132. **Surplus fund.]** § 129. All surplus funds remaining in the hands of the treasurer of the town or district after the completion of any road provided for under this subdivision of this Act shall be turned over to the common road fund of said town or road district, as the case may be, except as much thereof as the commissioners may order retained for the purpose of repairing said permanent road.

ARTICLE VII.

CERTAIN PROVISIONS APPLICABLE GENERALLY TO HIGHWAY OFFICIALS.

- 133. Tile drains—contract with owners.
- 134. Willow hedges—public nuisance.
- 135. Carriages may be kept off highways—when.
- 136. Commissioners may enter lands to open ditches, etc.—when owner will not consent—proceedings.
- 137. Material for constructing roads—eminent domain.
- 138. Authority to straighten water courses.
- 139. Right of owner to make crossing—costs.
- 140. To keep down weeds—penalty.
- 141. Capacity of bridges and culverts—penalty.

133. **Tile drains—Contract with owners.]** § 130. Whenever the commissioners of highways are about to lay a tile drain along any public road other than a State aid road, or the State Highway Commission or county superintendent of highways is about to lay such tile drain along a State aid road, the said highway commissioner[s], State Highway Commission, or county superintendent of highways, as the case may be, shall have the power to contract with the owners or occupants of adjoining lands to lay larger tile than would be necessary to drain the road, and to permit connection therewith by such contracting parties to drain their lands: *Provided*, that all such contracts on roads other than State aid roads for a sum in excess of \$200.00 shall be made on behalf of any town or road district by the highway commissioners thereof, with the consent of the county superintendent of highways.

134. **Willow Hedges—Public nuisance.]** § 131. Where willow hedges, or a line of willow trees have been planted along the margin of a road, so as to render tiling impracticable, the commissioners of highways if the road be other than a State aid road, and the State highway commission or the county superintendent of highways, if the road be a State aid road, may contract with the owner for their destruction; and they shall be destroyed before tiling. The planting of these trees hereafter on the margin of roads is hereby declared to be a public nuisance.

135. **Carriages may be kept off highways—When.]** § 132. The proper highway officials are hereby authorized to keep carriages

and vehicles of every kind off the public highways wherever necessary to properly repair the same.

136. Commissioners may enter lands to open ditches, etc.—When owner will not consent—Proceedings.] § 133. The highway commissioners of the towns and road districts are hereby authorized to enter upon any land adjacent to any highway in their respective towns or districts for the purpose of opening any ditch, whenever it shall be necessary to open a water course from any highway to the natural water course; and to dig, open and clean ditches upon said land for the purpose of carrying off the water from said highways; or to drain any slough or pond on said highways: *Provided*, that unless the owner of such land, or his agents, shall first consent to the cutting of such ditches, the commissioners shall apply to any justice of the peace of the county in which such road is situated for a summons, directed to any constable of said county, commanding him to summon the said owner to appear before the said justice, at a time and place specified in such summons, not less than five nor more than fifteen days from the date thereof, for the purpose of having the damages assessed which such owner may sustain by reason of the digging or opening of such ditches or drains. The said summons shall be under the hand of such justice and be served in the same manner as summons is now served in civil actions before justices of the peace. On the return of such summons, a venire shall be issued for a jury, as in other cases in the trial of civil actions before justices of the peace, which jury shall assess such damages and render a verdict therefor. Whereupon judgment shall be entered by the justice in accordance with the verdict. If either party shall feel aggrieved by such judgment, an appeal may be taken as in other cases: *Provided*, bond is filed within five days from the time of entering of the judgment. If no appeal is perfected within five days the amount so awarded shall be paid before the commissioners of highways shall be warranted and empowered to enter upon such lands and dig, open and clean such drains, ditches and water courses as aforesaid for the purposes contemplated in this Act. The commissioners are authorized to use the poll tax and road money of their town or district for the payment of such judgment: *Provided*, that not more than one-half of such jury shall be residents of the town or district which is liable to pay the damages: *Provided, further*, that in case the owner of said lands is a non-resident, service may be had by leaving a copy with the occupant or agent, or by notice in the same manner as prescribed in section 84 of this Act.

137. Material for constructing roads—Eminent domain.] § 134. The State Highway Commission, the State Highway

Engineer, the county superintendent of highways and the commissioners of highways of any town or district, for the purpose of constructing, maintaining or repairing gravel, rock or other roads, and for procuring material therefor, may enter upon lands of others, doing no more damage than the necessity of the case may require, and take therefrom such material as is necessary for the construction or repair of said roads: *Provided*, that such State Highway Commission, State Highway Engineer, county superintendent or commissioners of highways, their employees or teams shall not enter upon such lands for the purpose stated in this Act without having paid or tendered the amount of damages allowed or agreed upon: *And, provided, further*, if such State Highway Commission, State Highway Engineer, county superintendent of highways or commissioners of highways and the party or parties owning or controlling the lands to be entered upon, or from which material is to be taken, can not agree as to the amount of damage or value of such material, that the amount of damage shall be determined as provided for in the law for exercising the right of eminent domain.

138. **Authority to straighten water courses.]** § 135. Whenever any public road shall be petitioned for, and located, in part, in the bed of any stream, the highway commissioners of the several towns or districts are hereby authorized to enter upon the adjacent land on which said stream is located, for the purpose of changing the current of the said stream, so that it will not flow upon or over such proposed roadway; and to dig any necessary ditches for such purpose: *Provided*, that in case the owner of such land or his agent shall not consent to such straightening of said stream, then the commissioners shall first proceed to have the damages assessed and paid, in the same manner as is now provided for the assessment and payment of damages in proceedings to open ditches for the drainage of public highways.

139. **Right of owner to make crossing—Costs.]** § 136. Any person owning, using or occupying lands on both sides of any public highway, shall be entitled to the privilege of making a crossing under said highway for the purpose of letting his cattle and other domestic animals cross said road: *Provided*, said person shall erect at his own expense, a good and substantial bridge, with good railings on each side thereof, and build an embankment, of easy grade, on either side of said bridge; said bridge to be not less than sixteen feet wide, and to be approved in the case of a State aid road by the State Highway Commission, State Highway Engineer or county superintendent of highways, and in the case of any other than a State aid road, to be approved by the commissioners of highways of the town or district in which said bridge is built, and the

same to be kept constantly in good repair by the owner or occupant of said land, the construction subject always to the consent and approval of said State Highway Commission, State Highway Engineer, county superintendent of highways or commissioners of highways, as the case may be: *And, provided, further*, that in case such crossing is made on any waterway or natural channel for water and where a culvert or bridge is maintained as required for road purposes, said owners or occupants shall not be required to pay for or construct any more of said crossings than the additional cost of such crossing over and above the necessary cost of a suitable culvert or bridge for road purposes at such place.

140. To keep down weeds.] § 137. The commissioners of highways in their respective towns or road districts, shall annually, at the proper season, to prevent the spread of the same, destroy or cause to be destroyed, all cockle burr, Canada thistles, Russian thistle and all other kinds of thistles, or other noxious weeds, growing brush or plants growing on or upon all public roads other than State aid roads within their respective towns or districts. The State Highway Engineer or the county superintendent of highways shall attend to the destruction of such weeds, thistles and plants upon all State aid roads. It is also hereby made the duty of the highway officers aforesaid to seasonably mow and keep down all weeds or other vegetation growing along the highways under their respective jurisdictions.

PENALTY.] Any highway officer failing to comply with the provisions of this section shall be liable to a fine of not less than \$10.00 or more than \$25.00 for each season in which he shall neglect the requirements of this Act.

141. Capacity of bridges and culverts.] § 138. It shall be unlawful hereafter to construct any bridge or culvert upon any ravine, creek or river upon a public highway or street in any town, county or city in this State unless such bridge or culvert shall have the capacity of sustaining a weight of at least one hundred pounds to the square foot.

PENALTY.] Any person who shall violate the provisions of this section shall be guilty of a misdemeanor, and, upon conviction, shall be fined not to exceed \$200.00.

ARTICLE VIII.

LAW OF THE ROAD—OFFENSES AND PENALTIES,

- 142. Certain roads declared public highways.
- 143. The term carriage.
- 144. Notice against fast driving over bridge.
- 145. Destroying or defacing guide boards, etc.

146. Depositing in road weeds, garbage, etc.
147. Injuring sidewalks, bridge, etc.
148. Turn to the right.
149. Drunken driver—penalty.
150. Drunken driver—discharge of.
151. Running horses, etc., on public roads.
152. Team to be hitched.
153. Owner liable for damages—driver of stage, etc., guilty of misdemeanor.
154. Injuring or obstructing roads, etc.
155. Obstructing person in highway.
156. Itinerant camping on public highways unlawful—penalty for violating this section.
157. Engines on public highways—when unlawful to blow whistle—penalty.
158. Suits for recovery of fines or penalties under act, how brought—application of fines.
159. Fines—how disposed of.
160. Restriction—jurisdiction.

142. Certain roads declared public highways.] § 139. All roads in this State which have been laid out in pursuance of any law of this State, or of the Territory of Illinois, or which have been established by dedication or used by the public as highways for fifteen (15) years, and which have not been vacated in pursuance of law, are hereby declared to be public highways.

143. The term carriage.] § 140. The term “carriage” as used in this Act shall be construed to include stage coaches, wagons, carts, sleighs, sleds, automobiles, motorcycles, motor vehicles and every other carriage or vehicle used for the transportation of passengers and goods, or either of them.

144. Notice against fast driving over bridge.] § 141. The commissioners of highways, the State Highway Commission, the State Highway Engineer, or the county superintendent of highways, when they deem it advisable, may put up and maintain in conspicuous places at each end of any bridge a notice with the following words in large characters: “Five dollars fine for riding or driving on this bridge faster than a walk.” If any person shall ride or drive over any bridge, upon which such notice has been placed, faster than a walk, he shall forfeit the sum of five dollars for every such offense.

145. Destroying or defacing guide boards, etc.] § 142. For destroying or defacing any guide board, post or milestone, or any notice or direction put up on any bridge or otherwise, by or with the authority of the State Highway Commission, State Highway Engineer, county superintendent of highways, or the commissioners of highways of any town or district, the offender shall forfeit a sum of no [not] less than three dollars, nor more than fifty dollars.

146. Depositing in road weeds, garbage, etc.] § 143. It is hereby declared unlawful for any person to deposit in a public road weeds, trash, garbage or other offensive matter or any broken bottles, glass, boards containing projecting nails or any other thing likely to cause punctures in the tires of automobiles or motor vehicles; and any person so offending shall be liable to a penalty of not less than three dollars nor more than ten dollars: *Provided, however,* that this section shall not apply to proper deposits of harmless materials made in good faith and in a proper manner to repair the roads.

147. Injuring sidewalks, bridge, etc.] § 144. If any person shall purposely destroy or injure any sidewalk, public bridge, culvert, or causeway, or remove any of the timber or plank thereof, or obstruct the same, he shall forfeit a sum not less than three nor more than one hundred dollars, and shall be liable for all damages occasioned thereby and all necessary costs for rebuilding or repairing the same.

148. Turn to the right.] § 145. That whenever any persons traveling with any carriages, shall meet on any turnpike, road or public highway in this State, the persons so meeting shall seasonably turn their carriages to the right of the beaten track, so as to permit each carriage to pass without interfering or interrupting, under the penalty of five dollars for every neglect or offense, to be recovered by the party aggrieved: *Provided,* this section shall not be construed to apply to a case where it is impracticable from the nature of the ground for the driver of the carriage or wagon to turn to the right of the beaten track.

149. Drunken driver—Penalty.] § 146. No person owning any carriage, running or traveling upon any road in this State for the conveyance of passengers, shall knowingly employ, or continue in employment, any person to drive such carriage who is addicted to drunkenness or the excessive use of spirituous liquors; and if any such owner shall violate the provisions of this section, he shall forfeit at the rate of \$5.00 per day for all the time he shall keep such driver in his employment. Any person driving his own team, or the team of another, on the public highway, when intoxicated, shall be subject to a fine of not less than \$3.00, nor more than \$25.00 for each offense.

150. Drunken driver, Discharge of.] § 147. If any driver, while actually employed in driving any such carriage shall be guilty of intoxication, to such a degree as to endanger the safety of the passengers in the carriage, it shall be the duty of the owner of such carriage, on receiving written notice of the fact, signed by any one of said passengers, and certified by him on oath, forthwith to

discharge such driver from his employment; and every such owner who shall retain, or have in his employ, within thirty days after the receipt of such notice, any driver who shall have been so intoxicated, shall forfeit at the rate of five dollars per day for the time during which he shall keep any such driver in his employment after receiving such notice.

151. Running horses, etc., on public roads.] § 148. No person driving any carriage upon any turnpike, road or public highway within the State, with or without passengers therein, shall run his horses, or carriage or permit the same to run, upon any occasion, or for any purpose whatever, except in case of necessity; and every person who shall offend against the provisions of this section shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined not exceeding \$100.00 or imprisoned not exceeding sixty days, at the discretion of the court.

152. Team to be hitched.] § 149. It shall not be lawful for the driver of any carriage, used for the purpose of conveying passengers for hire, to leave the horses attached thereto while passengers remain therein, without making such horse fast with a sufficient halter, rope or chain, or by placing the lines in the hands of some other person, so as to prevent their running; and if any such driver shall offend against the provisions of this section, he shall forfeit the sum of \$20.00 to be recovered by action, to be commenced within six months; and unless the amount of such recovery be paid forthwith, execution shall be immediately issued therefor.

153. Owner liable for damages—Driver of stage, etc., guilty of misdemeanor.] § 150. The owner [s] of every carriage running upon any turnpike, road or public highway, for the conveyance of passengers, shall be liable, jointly or severally to the party injured, in all cases, for all injuries or damages done by any person in the employment of such owners as a driver while driving such carriage, to any person, or to the property of any person, and that whenever the act occasioning such injury or damage be wilful, negligent or otherwise, in the same manner as such driver would be liable. Any driver of any mail stage coach, or any other vehicle for the conveyance of passengers, wilfully offending against the provisions of this Act, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not exceeding \$300.00, or imprisoned not exceeding four months.

154. Injuring or obstructing roads, etc.] § 151. If any person shall injure or obstruct a public road by felling a tree or trees in, upon or across the same, or by placing or leaving any other obstruction thereon, or encroaching upon the same with any fence, or by plowing or digging any ditch or other opening thereon, or by turning a current of water so as to saturate or wash the same, or

shall leave the cuttings of any hedge thereon, for more than ten days, he shall forfeit for every such offense a sum not less than three dollars, nor more than ten dollars; and in case of placing any obstruction on the highway, an additional sum of not exceeding three dollars per day for every day he shall suffer such obstruction to remain after he has been ordered to remove the same by the commissioners of highways, or in case the road is a State aid road, after he has been ordered to remove the same by the State Highway Commission, State Highway Engineer or county superintendent of highways. Any person feeling himself aggrieved may make complaint under this section: *Provided, however,* this section shall not apply to any person who shall lawfully fell any tree for use and shall immediately remove the same out of the road, nor to any person through whose land a public road may pass, who shall desire to drain his land, and who shall give due notice to the proper highway officials of such intention: *And, provided, further,* that the commissioners of highways, State Highway Commission, State Highway Engineer, or county superintendent of highways, as the case may be, after having given reasonable notice (to the owners) of the obstruction, or persons so obstructing, or plowing, or digging ditches upon such road, of the obstruction, may remove any such fence or other obstruction, fill up any such ditch or excavation, except ditches necessary to the drainage of an adjoining farm emptying into a ditch upon the highway, and recover the necessary cost of such removal from such owner or other person obstructing such road aforesaid, to be collected by the highway officials having jurisdiction of the road whereon such offense was committed.

155. Obstructing person in highway.] § 152. If any person shall wilfully and unnecessarily hinder, obstruct or delay, or shall wilfully and unnecessarily attempt to delay, hinder or obstruct any other person in lawfully driving or traveling along or upon any public highway in this State, he shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be fined not less than ten (10) nor more than twenty-five (25) dollars; and shall also be liable for all damages occasioned to any person by reason of a violation of this section.

156. Itinerant camping on public highways unlawful.] § 153. It shall be unlawful for any itinerant person or persons on any public highway in this State to either hitch or turn loose any stock, cows, horses or other animals for purpose of feeding same or for purpose of temporary camping on such public highways of this State for a period to exceed twelve hours in any one township or district.

PENALTY FOR VIOLATING THIS SECTION.] Any legal voter or resident in this State may enter complaint before any court having

jurisdiction against any person or persons found violating this section and it shall be the duty of such court to issue a warrant for the arrest of such violators and have them brought forthwith before said court for examination, and if found guilty of such violation as charged, shall be fined in a sum not less than ten dollars (\$10.00) or exceeding fifty dollars (\$50.00) for each such offense, or committed to the county jail not exceeding thirty days, at the discretion of such court.

157. Engines on public highways.] § 154. It shall be the duty of persons in charge of any steam, or gasoline or oil traction engine, being propelled over the highways of this State, to stop said engine whenever they meet any person or persons going in the opposite direction on said highway with horses or other animals, until said horses or other animals shall have passed by; and said engine shall be stopped when it is one hundred (100) yards distant from said horses or other animals, and sooner in case said horses or other animals become frightened at said engine before arriving at said distance. The owner or driver of said engine shall also keep a good, trusty man not less than fifty (50) nor more than two hundred (200) yards in advance of said engine, to assist in controlling any horses or other animals being driven or used on said highway; until said horses or other animals shall have passed by said engine; and it shall be the duty of the man thus sent in advance to use all reasonable care and diligence to prevent the occurrence of any accidents which might result in case said horses or other animals become frightened at said steam engine.

WHEN UNLAWFUL TO BLOW WHISTLE.] It shall be unlawful for any person to blow the whistle of said engine while on the public highway.

PENALTY.] Any owner of a steam, or gasoline or oil traction engine, who, by himself, agent or employee, violates the provisions of this section, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall, for each offense, be fined not less than ten dollars nor more than fifty dollars, to be recovered before any court of competent jurisdiction, and shall also be liable for all damages that may be sustained by persons or property by reason of his failing to comply with the provisions of this section.

158. Suits for recovery of fines or penalties under Act, how brought—Application of fines.] § 155. All suits for the recovery of any fine or penalty under this Act, including as well such offenses as may be committed upon or in relation to State aid roads as upon other roads, shall be brought in the name of the town or district in which the offense is committed, before any justice of the peace within the county, who shall have jurisdiction in such cases, to

the extent of their jurisdiction in other cases, or before any other court of competent jurisdiction: *Provided*, that all suits or fines and penalties, incurred under this Act, on town or district and county line roads, shall be brought in the name of the town or district to which that part of the road shall have been allotted, before any justice of the peace who shall have jurisdiction in such cases to the extent of their jurisdiction in other cases or before any other court of competent jurisdiction; and it shall be the duty of the State Highway Commission, State Highway Engineer, county superintendent of highways and commissioners of highways to seasonably prosecute for all fines and penalties under this Act; but in case of failure of said officers to so prosecute, complaint may be made by any person: *Provided*, said person shall before bringing suit in the name of the town or district, give bond for costs, as is provided for in case of a non-resident. But whenever any person shall enter complaint to any of said highway officials, it shall be the duty of such highway official to at once proceed to investigate as to the reason of such complaint, and if such complaint is found to be just, he shall at once proceed to prosecution.

159. Fines—How disposed of.] § 156. All fines and penalties recovered under the provisions of this Act for offenses committed upon or in relation to State aid roads, shall, unless otherwise provided, be paid over to the county treasurer, and by him transmitted to the State Treasurer to become a part of the State road and bridge fund. All fines and penalties recovered under the provisions of this Act for offenses committed upon or in relation to all other roads shall, unless otherwise provided, be paid over to the treasurer of the road and bridge fund of the town or district where the offense is committed to be expended upon the roads and bridges in said district or town. The judgment or docket entry of the court or justice imposing a fine or penalty for violation of this Act as aforesaid, shall in each instance specify whether such offense was committed upon or in relation to a State aid road or a road other than a State aid road.

160. Restriction—Jurisdiction.] § 157. Nothing contained in this Act shall interfere with or affect any law concerning hackney coaches or carriages in any of the cities of this State, nor interfere with nor affect the laws or ordinances of any such city for the licensing or regulating such coaches or carriages. Justices of the peace shall have jurisdiction of all cases arising under this Act, where the penalty does not exceed their jurisdiction.

ARTICLE IX.

OPTIONAL—SINGLE HIGHWAY COMMISSIONER SYSTEM PROVIDED FOR.

- 161. Provisions optional.
- 162. Petition for adoption—election.
- 163. Notice of election.
- 164. Ballots—conduct of special election.
- 165. Result of election.
- 166. Election of commissioner—tenure of office.
- 167. Provision specially applicable to—counties not under township organization. a. Clerk. b. Conduct of elections.
- 168. A. Powers, duties and compensation of highway commissioner. B. Compensation.
- 169. Withdrawal from provisions of this article.
- 170. Election of officers upon withdrawal from this article.

161. Provisions optional.] § 158. The provisions of this article shall become effective in any township or road district in this State upon the adoption of the same by the legal voters of such township or road district as hereinafter provided and not otherwise.

162. Petitions for adoption—Election.] § 159. At any time following the passage and approval of this Act, on petition of not less than twenty-five of the legal voters of any township or road district, the town or district clerk thereof shall, within thirty days thereafter, call a special election at which there shall be submitted to the voters of such town or road district the question of having a single highway commissioner in such township or road district: *Provided, however,* that no such election shall be held within the period of thirty days next preceding any annual town or road district election, and elections for the purposes specified in this section shall not be held oftener than once in three years: *And, provided, further,* that in all counties not under township organization which are now operating under the optional Act entitled, "An Act in regard to roads and bridges in counties not under township organization, and to provide for the adoption of the same," approved May 10, 1901, no special election shall be held for the purposes provided in this section until the division of such counties into road districts as provided in section 41 of this Act.

163. Notice of election.] § 160. Upon the filing of a petition for an election to change from the three highway commissioner system to the single highway commissioner system, as provided in the preceding section, the town or district clerk shall post notices of the time and place of holding such special election in at least three of the most public places in said town or road district, which notices shall be posted at least fifteen days prior to the time of holding such election.

164. Ballots—Conduct of special election.] § 161. The ballots to be used at said election shall contain the following form: “For Single Highway Commissioner System;” “Against Single Highway Commissioner System.” The special election held pursuant to the provisions of this article shall be conducted in the same manner and subject to the same laws and regulations as are prescribed for other elections held pursuant to the provisions of this Act.

165. Result of election.] § 162. If a majority of the legal voters voting at said special election shall vote in favor of the proposition, “For Single Highway Commissioner System,” then and thereafter and until said vote shall be reversed in the manner hereinafter provided the provisions of this article shall be effective in such township or road district, and in said township or road district there shall be but one highway commissioner to be elected as hereinafter provided.

166. Election of commissioner—Tenure of office.] § 163. At the next annual town meeting or road district election held next after the adoption of the provisions of this article by any town or road district in this State, there shall be elected a single highway commissioner for such town or district, who shall hold his office for three years and until his successor is elected and qualified. And thereafter there shall be elected every three years a highway commissioner as the successor of the highway commissioner whose term of office shall expire. The official term of any highway commissioner holding office at the time of the adoption of this article by any town or road district shall expire upon the qualification of the single highway commissioner elected at said next ensuing annual town meeting or road district election.

167. Provisions specially applicable to—Counties not under township organization—(A) Clerk.] § 164. In any road district in a county not under township organization adopting the provisions of this article, the district clerk shall be elected at the same time as the highway commission [er]. The official term of any such clerk holding office at the time of the adoption of this article by any town or road district shall expire upon the qualification of the district clerk elected at said next ensuing annual road district election.

(B) CONDUCT OF ELECTIONS.] In all road districts in counties not under township organization having adopted the provisions of this article, the regular election for commissioner of highways and district clerk shall be held on the first Tuesday in April every three years at the place designated by the commissioner of highways. The commissioner of highways and two other persons to be named by the county board for each road district of the county operating under this article shall act as judges of election, and the district

clerk shall be *ex officio* clerk of all district elections, but before entering upon the discharge of their duties they shall take the oath of office prescribed by the general election laws of the State. In the absence of any of the above named officers the vacancy shall be filled by appointment by the commissioner, or in his absence by the district clerk, and in case both the commissioner and the district clerk are absent, the electors present shall appoint such officers.

168. (A) Powers, duties and compensation of highway commissioner.] § 165. In any town or road district which shall adopt the provisions of this article all the powers and duties hereinbefore vested in the board of highway commissioners and the members thereof, shall thereafter be fully enjoyed, exercised and employed by the single highway commissioner provided for in this article, and all the preceding provisions of this Act, in so far as compatible with the provisions of this article, shall remain and be in full force and effect.

(B) COMPENSATION.] In any town or road district adopting the provisions of this article, the single highway commissioner herein provided for shall receive for each and every day he is necessarily employed in the discharge of his duties a salary to be fixed by the county board in counties not under township organization and by the board of town auditors in counties under township organization not to exceed in counties of the first class three dollars and fifty cents (\$3.50) per day, in counties of the second class four dollars (\$4.00) per day, and in counties of the third class five dollars (\$5.00) per day, upon a sworn statement to be filed by such commissioner in the office of the town or district clerk, showing the number of days he was employed and the kind of employment, and giving the dates thereof.

169. Withdrawal from provisions of this article.] § 166. Any town or road district having adopted the provisions of this article may withdraw from the provisions thereof and elect to come under the general provisions of this Act whereby three highway commissioners are provided for in each town or road district. Such withdrawal from the provisions of this article shall be by the vote of the legal voters of such town or district, and provisions therefor may be inaugurated by petition to the town or district clerk, in the manner provided in section 161 of this Act. Upon the filing of such petition a special election therefor shall be called, and conducted, and the result thereof declared as provided in sections 161, 162 and 164 of this Act: *Provided*, that no such special election shall be held within the period of thirty days preceding the second Tuesday in April in any year. At said special election the proposition petitioned for and submitted to the voters shall be as follows: "For con-

tinuing single Highway Commissioner System” and “Against continuing [single] Highway Commissioner system.” A majority of all the voters voting at such election shall be required to withdraw such town or road district from the provisions of this article, and after any town or district has voted to withdraw from the provisions of this article, no special election shall be called to return to the provisions of this said article for a period of at least three years.

170. Election of officers upon withdrawal from this article.]

§ 167. In case any town or road district having adopted the provisions of this article shall elect to withdraw therefrom and come under the three commissioner system as provided in the preceding section of this Act, the town or district clerk shall give notice, in the manner hereinbefore provided that at the next annual town meeting in counties under township organization, or at an election to be held on the first Tuesday in April then next ensuing in counties not under township organization, there will be elected three highway commissioners for such town or road district. Of the three commissioners elected at the election held pursuant to such notice, one shall hold his office for three years, one for two years and the third for one year, to be determined between them by lot before entering upon the duties of their office. Upon the election and qualification of the members of such board of highway commissioners the unexpired portion of the term of any single highway commissioner who may be in office by virtue of the preceding provisions of this article shall thereby be terminated.

In all road districts in counties not under township organization electing to withdraw from the provisions of this article, as aforesaid, a district clerk shall also be elected at the time and place of holding the election of the three highway commissioners as aforesaid, and the unexpired portion of the term of any district clerk then in office shall terminate upon the qualifications of the clerk elected at such election.

ARTICLE X.

ACT CONSTRUED—STATUTES REPEALED.

171. Part invalid.

172. Certain acts repealed.

171. Part invalid.] § 168. The invalidity of any portion of this Act shall not affect the validity of any portion thereof which can be given effect without such invalid part.

172. Certain acts repealed.] § 169. The following Acts and parts of Acts are hereby repealed:

“An Act in regard to roads and bridges in counties under township organization, and to repeal an Act and parts of Acts therein named,” approved June 23, 1883: *Provided, however*, that all officials now holding office under said Act shall continue to exercise and enjoy their respective rights, powers, duties and emoluments as therein provided until the first election of highway officials held under and pursuant to the provisions of this Act.

“An Act to provide for the organization of road districts, the election and duties of the officials therein, and in regard to roads and bridges, in counties not under township organization, and to repeal an Act and parts of Acts therein named,” approved May 4, 1887: *Provided, however*, that all officials now holding office under said Act shall continue to exercise and enjoy their respective rights, powers, duties and emoluments as therein provided until the first election of highway officials held under and pursuant to the provisions of this Act.

“An Act in regard to roads and bridges in counties not under township organization and to provide for the adoption of the same,” approved May 10, 1901: *Provided, however*, that all officials now holding office under said Act shall continue to exercise and enjoy their respective rights, powers, duties and emoluments as therein provided until the first election of highway officials held under and pursuant to the provisions of this Act.

“An Act requiring the destruction of cockle burrs, weeds or plants,” approved May 31, 1879.

“An Act to amend sections one (1) and two (2) of an Act entitled ‘An Act requiring the destruction of cockle burrs, weeds or plants,’ approved May 31, 1879, and by adding thereto sections three (3), four (4) and five (5),” approved June 2, 1895.

“An Act to authorize the construction and maintenance of gravel, rock, macadam or other hard roads,” approved June 18, 1883.

“An Act to protect persons and property from danger from steam engines on public highways,” approved June 26, 1885.

“An Act to enable commissioners of highways to condemn lands under the right of eminent domain for the purpose of procuring rock, gravel or other material for building or repairing public roads,” approved June 21, 1895.

“An Act authorizing the highway commissioners of any township to construct sidewalks in unincorporated villages,” approved June 21, 1895.

“An Act concerning travel upon public highways,” approved June 21, 1895.

“An Act to regulate the construction of bridges and culverts,” approved April 21, 1899.

"An Act to provide for appointment of a good roads commission and to make an appropriation therefor," approved May 15, 1903.

"An Act entitled 'An Act to enable commissioners of highways in counties not under township organization to straighten water courses in the construction of public roads,'" approved May 16, 1905.

"An Act authorizing the commissioners of highways in any township in counties under township organization and the commissioners of highways or boards of county commissioners in counties not under township organization, to maintain earth roads with a drag and to contract for the use of the same and provide penalty for injury to work so done," approved May 31, 1907.

"An Act making it the duty of counties under township organization and towns in counties under township organization to build, construct and maintain approaches to bridges located on or near town and county lines," approved June 4, 1907.

"An Act to protect turnpike and gravel or macadam roads and to provide a penalty for its violation," approved June 5, 1911.

"An Act to authorize counties changing from township organization to county organization to assess a poll tax, road labor and road tax at any meeting of the county commissioners during the first year after such change," approved May 28, 1879.

"An Act in regard to itinerant camping on public highways," approved April 21, 1899.

"An Act to establish a State Highway Commission defining the duties thereof and to make an appropriation for experimental purposes," approved May 18, 1905.

"Section 16 of an Act entitled, 'An Act to revise the law in relation to township organization,'" approved March 4, 1874, and as amended by an Act approved May 10, 1901.

"An Act to provide for the election of the commissioners of highways in counties under township organization, and to legalize the election and official acts of such as were elected in the years 1874 and 1875, and to fix the compensation of the treasurers of such commissioners," approved April 15, 1875.

CONSTRUCTION OF BRIDGE PIERS.

AN ACT to compel the construction of bridge pier booms, on all bridges over the navigable portion of the Illinois river. [Approved June 16, 1883. In force July 1, 1883. Laws 1883, p. 54.]

173. For construction of bridge pier booms over Illinois River.

173. For construction of bridge pier booms over Illinois river.] § 1. *Be it enacted by the People of the State of Illinois,*

represented in the General Assembly: That all bridges now constructed or hereafter to be constructed over the navigable portion of the Illinois river, there shall be built and kept in good repair bridge pier booms, by the company or corporation owning and managing the said bridges, and within a reasonable time after the passage of this Act or the construction of any bridge over said river as aforesaid; and said pier boom shall be constructed above the upper side of each pier contiguous to the channel of the river and shall commence at the point of said pier and be at least three hundred feet in length each; the piling used for said work shall be sufficient in length to be at least, when used, three feet above high-water mark, and be set sufficiently close together so that the current of water can not pass through, under or between them, and be made solid so that a steamboat or other water-craft cannot bear against them in passing through without moving the same; and that said piling shall be weatherboarded with plank at least one and one-quarter inch in thickness, from the top to low-water mark, thus forming a solid wall. That the said work shall be constructed under the supervision of a competent engineer.

EXEMPTING CERTAIN BRIDGES FROM TAXATION.

AN ACT exempting from taxation bridges across any stream forming the boundary line between this and an adjoining State when such bridge is a free public highway. [Approved May 10, 1889. In force July 1, 1889. Laws 1889, p. 63.]

178. Exempting certain bridges from taxation.

179. Penalty for violating rules of owner, etc.

178. Exempting certain bridges from taxation.] § 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly:* That whenever any bridge used exclusively for persons and vehicles, across any stream forming the boundary line between this and an adjoining State, shall be made in a public highway free to all persons and vehicles, such bridge shall not be subject to taxation in this State: *Provided*, that nothing in this Act shall prevent the owner or owners of such bridge or those under whose authority it is operated from making and enforcing by fine such rules and regulations as may be deemed necessary for the management of such bridge.

179. Penalty for violating rules of owner, etc.] § 2. Whoever shall violate any of the rules or regulations so made by such owner or owners or those under whose authority such bridge is operated, shall be deemed guilty of a misdemeanor, and shall be fined not to exceed one hundred dollars.

MOTOR VEHICLE LAW.

MOTOR VEHICLES AND MOTOR BICYCLES.

AN ACT defining motor vehicles and providing for the registration of the same and of motor bicycles, and uniform rules regulating the use and speed thereof; prohibiting the use of motor vehicles without the consent of the owner and the offer or acceptance of any bonus or discount or other consideration for the purchase of supplies or parts for any such motor vehicle or for work or repairs done thereon by others, and defining chauffeurs and providing for the examination and licensing thereof, and to repeal certain Acts therein named. [Approved June 10, 1911. In force July 1, 1911. Laws 1911, p. 487.]

180. Term "motor vehicle" defined.
181. Registration by owners of motor vehicles and motor bicycles—certificate of registration.
182. Numbers to be displayed upon motor vehicles and motor bicycles.
183. Lamps.
184. Registration by manufacturers and dealers—registration.
185. Fictitious number.
186. Registration in case of sale.
187. Non-resident not required to register under certain conditions.
188. Brakes, horns, etc .
189. Speed.
190. Racing on public highway.
191. Local ordinances prohibited.
192. License of chauffeurs—renewals.
193. Chauffeur's badge.
194. Use of motor vehicles and motor bicycles without owner's consent and offer and acceptance of bonus on purchase of supplies or parts prohibited.
195. Meeting animals—giving name and address in case of accident.
196. No effect or right to damages.
197. Penalties.
198. Disposition of registration fees.
199. Public highways and local authorities defined.
200. Acts repealed.

180. Term "Motor Vehicle" defined.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That whenever the term "motor vehicle" is used in this Act, it shall be construed to include automobiles, locomobiles, and all other vehicles propelled otherwise than by muscular power, except motor bicycles, traction engines and road rollers, the cars of electric and steam railways and other motor vehicles running only upon rails or tracks, but nothing in this Act shall be construed to apply to or to affect bicycles or tricycles or such other vehicles as are propelled exclusively by muscular pedal power.

181. Registration by owners of motor vehicles and motor bicycles—Certificate of registration.] § 2. Every owner of a

motor vehicle or motor bicycle which shall be driven in this State shall, except as otherwise provided in this Act, within ten days after he becomes the owner of such motor vehicle or motor bicycle, file in the office of the Secretary of State an application for a certificate of registration properly sworn to, setting forth his name and address, with a brief description of the vehicle, or bicycle, to be registered, including the name of the maker, factory number, style of vehicle or bicycle and the motor power, and (except in case of electrically propelled vehicles) the amount of such motor power stated in figures of horse power on a blank to be prepared and furnished by such Secretary of State for that purpose, and shall pay to said Secretary of State a registration fee for each calendar year for each motor bicycle so registered, the sum of two dollars, and a registration fee for each calendar year for each motor vehicle so registered of 25 horse power and less, the sum of \$4.00; for each motor vehicle of 35 horse power and more than 25 horse power, the sum of \$6.00; for each motor vehicle of 50 horse power and more than 35 horse power, the sum of \$8.00; for each motor vehicle of more than 50 horse power, the sum of \$10.00, and for each and every electrically propelled motor vehicle so registered, the sum of \$5.00: *Provided*, the first registration fee for each motor vehicle or motor bicycle shall be *pro rated* in proportion to the number of months included between the first day of the month in which any such motor vehicle or motor bicycle is first registered and the thirty-first day of December then next ensuing, and that no certificate for re-registration shall issue for less sum than the fee required for a calendar year: *And, provided, further*, that the owner of any motor vehicle registered in the office of the Secretary of State in compliance with law shall be entitled to register his said motor vehicle in compliance with the provisions of this Act upon the payment of the registration fees herein specified, less the unearned portion of the registration fee previously paid by him, figuring such unearned portion from the month in which such motor vehicle is registered as herein provided to the month in which such registration shall expire. Said registration shall be made on the date the application is received and filed by the Secretary of State and shall expire with the last day of the calendar year in which such registration is made. Upon the filing in the office of the Secretary of State of said application and the payment of the registration fee, as hereinbefore provided, the Secretary of State, or his duly authorized agent, shall, without further fee, assign to such motor vehicle, or motor bicycle, as described in such application, a distinctive number, and shall issue to the owner of such motor vehicle or motor bicycle, as it is described in the application filed, a certificate of registration, which certificate shall be in the form of a card, which may be carried in

the pocket, and which certificate shall contain the descriptive number so assigned to such motor vehicle or motor bicycle, the name and address of the owner, a brief description of such motor vehicle or motor bicycle, stating the name of the manufacturer, the motor power, and the amount of such motor power stated in figures of horse power, or that such motor vehicle or motor bicycle is electrically propelled. The Secretary of State shall also issue and deliver to the owner of such motor vehicle or motor bicycle a seal of aluminum or other suitable material which shall be circular in form and not to exceed two inches in diameter, having stamped thereon the words, "Registered motor vehicle or motor bicycle No....., Ill. Motor Vehicle and Bicycle Law," with the registration number and the year of issue inserted therein, which seal shall be affixed to the motor vehicle or motor bicycle to which such number has been assigned. Duplicate certificates of registration will be issued upon a payment of fifty cents and the filing in the office of the Secretary of State of an affidavit to the effect that the original certificate of registration was lost, stolen or destroyed. The Secretary of State shall cause the name of such owner, with his address, registration number and date of the filing of the application and the description of the motor vehicle or motor bicycle, to be entered in alphabetical order of the owner's name in a book to be kept for such purpose in the office of said Secretary of State, and shall not thereafter assign a number once assigned to a motor vehicle or motor bicycle owned by any other person, if the owner of the motor vehicle or motor bicycle to whom such number was first assigned shall, not less than twenty (20) days prior to the day of expiration of said registration, file an application accompanied by the fees herein specified for the registration or re-registration of a motor vehicle or motor bicycle and request the assignment of said number to a motor vehicle or motor bicycle owned by him: *Provided*, that this section shall not apply to manufacturers of, or dealers in, motor vehicles in this State, except as to motor vehicles kept by such manufacturers or dealers for private use or for public hire. The Secretary of State shall, at the end of each calendar month, except the month of December in each year, print and mail to the clerks of all the counties in this State lists of registrations made in accordance herewith, showing the numbers of the motor vehicles and motor bicycles and the names and addresses of the owners thereof.

182. Numbers to be displayed upon motor vehicles and motor bicycles.] § 3. The Secretary of State shall supply and deliver to the address of the owner of each licensed motor vehicle or motor bicycle registered in his office, as herein provided, charges prepaid, and without additional cost, one number plate for each

motor bicycle, which shall be of a size one-third of that required for motor vehicles, as hereinafter provided, and which shall be conspicuously displayed thereon, and two number plates for each motor vehicle other than a motor bicycle. All such number plates issued during any calendar year shall be of like design and color combination, simple and inexpensive as may be for the purpose required, and the number thereon shall correspond with the number of the certificate of registration and registration seal issued by the Secretary of State, as hereinbefore provided, and such number plates shall be conspicuously displayed upon the front and back of the motor vehicle to which they are assigned, as herein provided, whenever the same shall be driven or used upon the public streets, roads, turnpikes, parks, parkways, drives or other public highways in this State; and shall be firmly attached to the said motor vehicle so that they will not swing loosely, and the rear number plate shall not be less than twenty (20) inches above the surface of the ground, and both shall at all times be kept clean and free from grease and dirt. The figures upon such number plates shall be separate arabic numerals, not less than six (6) inches in height, and each stroke shall be of a width not less than five-eighths of an inch, and said number plates shall also bear as part of such number the letters "Ill." and each of such letters shall be not less than one inch in height. Such number plates shall be of a distinctly different color and shape for each calendar year, and there shall be at all times a marked contrast between the color of the number plates and that of the figures and letters thereon: *Provided, however*, the same combination of colors may be repeated after the lapse of five (5) years from the date of their first issue. The owner of such motor vehicle shall not be required to place any other marks of identity upon such motor bicycle or vehicle except the registration seal provided for in section 2 of this Act. The Secretary of State shall pay the actual cost of such number plates, registration seals and certificates furnished for all registered motor bicycles and motor vehicles from the fees collected for such registration, provided a sworn detailed statement shall be made with each biennial report as to the amount expended therefor.

183. Lamps.] § 4. When upon any public highway in this State, during the period from sunset to one hour before sunrise, every motor bicycle shall carry one lighted lamp and every motor vehicle two lighted lamps, showing white lights visible at least two hundred (200) feet in the direction toward which each motor bicycle or vehicle is proceeding and shall also exhibit at least one lighted lamp which shall be so situated as to throw a red light visible in the reverse direction. The number plate at the back of the motor vehicle provided for in section 3 shall be firmly attached to vehicle, so that

it will not swing loosely, and shall be so lighted that the numbers on said plate shall be plainly legible and intelligible at a distance of 150 feet: *Provided, however*, that nothing in this section contained shall be so construed as to prevent the use of any rear number plate other than that furnished by the Secretary of State, if such other plate and the numbers thereon shall correspond exactly in color and shape and size with the number plate provided for in section 3 of this Act: *And, provided, further*, that no means for lighting said rear number shall be held or taken to comply with the requirements of this section, unless the light or lights with which the same is provided are accessible and controllable only from the outside of the motor vehicle to which the same is attached.

184. Registration by manufacturers and dealers—Registration.] § 5. Every person, firm, association or corporation manufacturing or dealing in motor vehicles may instead of registering each motor vehicle so manufactured or dealt in, make a verified application upon a blank to be furnished by the Secretary of State for a general distinctive number for all the motor vehicles owned or controlled by such manufacturer or dealer, such application to contain: (a) A brief description of each style or type of motor vehicle manufactured or dealt in by such manufacturer or dealer, including the character of the motor power, the amount of such motor power (except in case of electrically propelled motor vehicles), stated in figures of horse power, and (b) the name, residence, including county and business address, of such manufacturer or dealer. Upon the payment of the registration fee of fifteen dollars for each calendar year such application shall be filed and registered in the office of the Secretary of State in the manner provided in section two of this Act. There shall thereupon be assigned and issued to such manufacturer or dealer a general distinctive number, and without expense to him there shall be issued and promptly delivered to such manufacturer or dealer at his business address a certificate of registration and registration seal in such form as the Secretary of State shall prescribe, and two number plates with a number corresponding with the number of such certificate of registration and registration seal. The number plates so issued shall be of distinctly different form than those provided for in section 3 of this Act but shall correspond in color and size of numbers and letters with the number plates for motor vehicles provided for in said section 3 hereof. Such number plates shall be conspicuously displayed upon the front and back of every motor vehicle of such manufacturer or dealer when the same is operated or driven on the public highways. Such manufacturer or dealer may obtain as many duplicates of such number plates as may be desired upon payment to the Secretary of State of

one dollar for each duplicate. Nothing in this subdivision shall be construed to apply to a motor vehicle operated by a manufacturer or dealer for private use or for hire.

Such registration shall be renewed annually in the same manner and on the payment of the same fee as provided in this section for original registration, such renewal to take effect on the first day of January of each year. The provisions of section 2, relating to first registrations made in compliance therewith and duration of renewals, shall apply to registration under this section.

185. Fictitious number.] § 6. No motor vehicle or motor bicycle shall be used or operated upon the public highways of this State after this Act shall take effect which shall display thereon a number belonging to any other vehicle or bicycle or fictitious registration number: *Provided, however,* that this section shall not be construed to prohibit any other number being displayed for any lawful purpose upon a motor vehicle or motor bicycle in addition to the number plates issued by the Secretary of State as aforesaid.

Not later than the tenth day of January of each calendar year the owner of any licensed motor vehicle or motor bicycle shall file with the Secretary of State a properly executed application for registration and such application shall be accompanied by the fee required in each case by this Act.

186. Registration in case of sale.] § 7. Immediately upon the sale and delivery of any motor vehicle or motor bicycle which has been registered as herein provided prior to the date of such sale by any person other than a manufacturer or dealer, the vendor shall remove the number plate or plates and the registration seal from the motor vehicle or motor bicycle so sold and within ten days after the date of such sale the vendor shall send a statement of such sale showing the date thereof, the registration number of the motor vehicle or motor bicycle so sold, and the name of the purchaser to the Secretary of State, together with a filing fee of one dollar, and thereupon such registration seal and number plate or plates shall cease to apply to the motor vehicle or motor bicycle so sold, and the purchaser shall register the same as in the case of an original registration. Upon the payment to the Secretary of State of an additional fee of one dollar, any other motor vehicle of like horse power or less, or any motor bicycle owned by such vendor may be registered by such vendor, and the registration seal and number plate or plate so removed from the motor vehicle or motor bicycle so sold shall be assigned by the Secretary of State and shall apply to and be used upon such other motor vehicle or motor bicycle until the thirty-first day of December then next ensuing: *Provided, however,* that in case the horse power of any motor vehicle to which the unexpired term of the registration of the vehicle sold is sought to be

applied would have required the payment of a larger registration fee than was paid upon the registration of the motor vehicle so sold, the vendor thereof shall before the registration seal and number plates may be applied to or used upon such motor vehicle of greater horse power, pay to the Secretary of State such a sum as added to the amount of the original registration fee paid for the year in which such motor vehicle is sold, equals the amount of the registration fee provided by this Act to be paid upon the registration of a motor vehicle of such greater horse power.

187. Non-resident not required to register under certain conditions.] § 8. The provisions of sections two, three, five, six and seven of this Act shall not apply to any motor vehicle or motor bicycle owned by non-residents of this State (foreign corporations excepted), provided the owner thereof has complied with any law requiring the registration of motor vehicles or motor bicycles, or the names of the owners thereof, in force in the city, State, territory, or Federal district of his residence, provided the registration number showing the initial or abbreviation of the name of such city, State, territory or Federal district shall be displayed on such vehicle, substantially as in section three of this Act provided: *And, provided, further,* that a non-resident within the meaning of this Act shall be held and defined to mean a person residing in another State and temporarily sojourning within this State for a period of sixty days, or less, in any one year.

188. Brakes, horns, etc.] § 9. Every motor vehicle and motor bicycle while in use on a public highway shall be provided with good and sufficient brakes and also with a suitable bell, horn or other signal device. No part of the machinery of any motor vehicle or motor bicycle shall be left running while such motor vehicle or motor bicycle is left standing without an attendant on any public highway in this State.

189. Speed.] § 10. No person shall drive a motor vehicle or motor bicycle upon any public highway in this State at a speed greater than is reasonable and proper having regard to the traffic and the use of the way or so as to endanger the life or limb or injure the property of any person. If the rate of speed of any motor vehicle or motor bicycle operated upon any public highway in this State where the same passes through the closely built up business portions of any incorporated city, town or village exceeds ten (10) miles an hour or if the rate of speed of any motor vehicle or motor bicycle operated on any public highway in this State where the same passes through the residence portions of any incorporated city, town or village exceeds fifteen (15) miles an hour or if the rate of speed of any motor vehicle or motor bicycle operated on any public high-

way in this State outside the closely built up business portions and the residence portions within any incorporated city, town or village exceeds twenty (20) miles an hour or upon any public highway outside of the limits of an incorporated city, town or village if the rate of speed exceed twenty-five (25) miles per hour, such rates of speed shall be *prima facie* evidence that the person operating such motor vehicle or motor bicycle is running at a rate of speed greater than is reasonable and proper having regard to the traffic and use of the way or so as to endanger the life or limb or injure the property of any person. If the rate of speed of a motor vehicle or motor bicycle operated on any public highway in this State in going around a corner or curve in a highway where the operator's view of the road traffic is obstructed exceeds six (6) miles an hour, such rate of speed shall be *prima facie* evidence that the person operating such motor vehicle or motor bicycle is running at a rate of speed greater than is reasonable having regard to the traffic and the use of the way or so as to endanger the life or limb or injure the property of any person.

190. Racing on public highway.] § 11. Any person driving a motor vehicle or a motor bicycle upon a public highway in this State in a race, shall, upon conviction, be fined in a sum not exceeding \$200.00.

191. Local ordinances prohibited.] § 12. No owner of a motor vehicle, except motor trucks and motor driven commercial vehicles, or motor bicycle, who shall have obtained a certificate from the Secretary of State and paid the registration fees as hereinbefore provided, shall be required to pay any tax for vehicles carrying loads or any other tax upon the use of any such motor vehicle or motor bicycle in excess of the sum of \$10.00 per annum for motor vehicles of thirty-five horse power or less used for the transportation of persons or more than twenty dollars (\$20.00) per annum for motor vehicles of more than thirty-five (35) horse power used for the transportation of persons, from and after May 1, 1912, or to obtain any other license or permit to use or operate the same, nor shall such owner be required to display upon his motor vehicle or motor bicycle any other number than the number of the registration seal, issued by the Secretary of State, or excluded or prohibited from or limited in the free use of his said motor vehicle or motor bicycle, nor limited as to speed upon any public street, avenue, road, turnpike, driveway, parkway, or any other public place, at any time when the same is or may hereafter be opened to the use of persons having or using other vehicles, nor be required to comply with other provisions or conditions as to the use of said motor vehicles or motor bicycles except as in this Act provided: *Provided, however,* that nothing in this section contained shall be construed to apply to, or

include, any speedway created, provided for, or maintained by the local authorities of any city, village, town or other municipal corporation within the State: *And, provided, further*, that the local authorities having jurisdiction over the public parks shall not by the terms of this Act be prohibited from adopting and enforcing such reasonable ordinances, rules or regulations concerning the speed at which motor vehicles or motor bicycles may be operated within any such parks, provided the rate of speed of motor vehicles or motor bicycles by such ordinances, rules or regulations shall not be lower than the rate fixed for other vehicles and provided such authorities shall, by signs conspicuously placed, indicate the rate of speed permitted by such ordinances, rules or regulations: *And, provided, further*, that motor vehicles or motor bicycles may be excluded from any cemetery or grounds used for the burial of the dead, by the authorities having jurisdiction over the same. Except as in this section provided, no city, town or village, or other municipality shall have power to make any ordinance, by-laws or resolution limiting or restricting the use or speed of motor vehicles or motor bicycles, and no ordinance, by-law or resolution heretofore or hereafter made by any city, village or town, or other municipal corporation within the State, by whatever name known or designated, in respect to or limiting the use or speed of motor vehicles or motor bicycles shall have any force, effect or validity, and they are hereby declared to be of no validity or effect: *Provided*, that nothing in this Act contained shall be construed as affecting the power of municipal corporations to make and enforce ordinances, rules and regulations affecting motor trucks and motor driven commercial vehicles and motor vehicles which are used within their limits for public hire, or from making and enforcing reasonable traffic and other regulations except as to rates of speed not inconsistent with the provisions hereof.

192. License of chauffeurs—Renewals.] § 13. An application for a license to operate motor vehicles as a chauffeur, which is hereby defined to mean any person operating a motor vehicle as a mechanic or employé, or for hire, may be made by mail or otherwise to the Secretary of State, or his duly authorized agent, upon blanks prepared under his authority. The Secretary of State shall appoint examiners and cause examinations to be held at convenient points throughout the State as often as may be necessary. Such applications shall be accompanied by the fee provided herein and by a photograph of the applicant in such numbers and forms as the Secretary of State shall prescribe, and such photographs shall have been taken within thirty days prior to the filing of such application. Before such a license is granted the applicant shall pass such an examination as to his qualifications as the Secretary of State shall

require and no license shall be issued until the Secretary of State, or his authorized agent, is satisfied that the applicant is a proper person to receive it, and no chauffeur's license shall be issued to any person under eighteen years of age. A distinguishing number or mark shall be assigned to each chauffeur to whom a license shall be issued and the license shall be in such form as the Secretary of State may determine; it may contain special restrictions and limitations concerning the type of motor car, horse power, design and other features of the motor vehicle which the licensee may operate. It shall contain the distinguishing number or mark assigned to the licensee, his name, place of residence and address, a brief description of the licensee for the purpose of identification and a photograph of the licensee. Such distinguishing number or mark shall be of a distinctly different color each year and in each year shall be of the same color as that of the number plates issued for that year. The holder of every such license shall endorse his usual signature on the margin of the license in a space to be provided for that purpose, immediately upon receipt of said license, which shall not be valid until so endorsed. Every application for a license filed under the provisions of this section shall be sworn to and shall be accompanied by a fee of \$5.00. And all licenses issued prior to December 31, 1912, shall expire on that date.

Upon receipt of such an application the Secretary shall file the same in his office and register the applicant in a book or index which shall be kept in the same manner as the book or index for the registration of motor vehicles and when the applicant shall have passed the examination herein provided for, the number or mark assigned to such applicant, together with the fact that such applicant has passed such examination, shall be noted in said book or index, and the name of the applicant shall be furnished the county clerk of the county of which the applicant is a resident.

No person shall operate or drive a motor vehicle as a chauffeur upon a public highway of this State after the first day of January, 1912, unless such person shall have complied in all respects with the requirements of this section: *Provided, however,* that a non-resident chauffeur who has registered under the provisions of the law of the foreign country, State, territory, or Federal district of his residence substantially equivalent to the provisions of this section shall be exempt from license hereunder. Such license shall be renewed annually upon the payment of a fee of \$3.00, and shall take effect on the first day of January of each year: *Provided, however,* that if it shall be made to appear to the satisfaction of the Secretary of State that any chauffeur shall have driven or operated a motor vehicle within this State while under the influence of intoxicating liquor the Secretary of State shall not renew the license of such chauffeur

until after the expiration of the period of one year from and after the date of the expiration of the license of any such chauffeur.

193. Chauffeur's badge.] § 14. The Secretary of State shall furnish to every chauffeur so licensed a suitable metal badge with the distinguishing number or mark assigned to him thereon, without extra charge therefor and this badge shall be worn by such chauffeur pinned upon his clothing in a conspicuous place, at all times while he is operating or driving a motor vehicle on the public highways. Said badge shall be valid only during the term of the license of the chauffeur to whom it is issued as aforesaid.

No chauffeur having been licensed as herein provided shall permit any other person to possess or use his license or badge, nor shall any person while operating or driving a motor vehicle use or possess any license or badge belonging to another person, or a fictitious license or badge.

194. Use of motor vehicles and motor bicycles without owner's consent and offer or acceptance of bonus on purchase of supplies or parts prohibited.] § 15. No chauffeur or other person shall drive or operate any motor vehicle or motor bicycle upon any street, or highway, in this State in the absence of the owner of such motor vehicle or motor bicycle without said owners' consent; and no chauffeur or other person having the care of a motor vehicle for the owner shall receive or take directly or indirectly any bonus, discount or other consideration for the purchase of supplies or parts for such motor vehicle or for work or labor done thereon by others; and no person furnishing such supplies or parts, work or labor, shall give or offer any such chauffeur or any other person having the care of a motor vehicle for the owner thereof, either directly or indirectly, any bonus, discount or other consideration thereon. Any person violating any of the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined the sum not exceeding two hundred dollars (\$200.00) or imprisoned in the county jail for a period not exceeding six (6) months, or both, in the discretion of the court.

195. Meeting animals—Giving name and address in case of accident.] § 16. Upon approaching a person walking upon or along a public highway, or a horse or horses, or other draft or domestic animal or animals being ridden, led or driven thereon, the operator of a motor vehicle or motor bicycle shall give reasonable warning of his approach and use every reasonable precaution to avoid injuring such person, or frightening or injuring such horse, horses, or other draft or domestic animal or animals, and, if necessary, stop his said motor vehicle or motor bicycle until he can safely proceed, and in case of any injury to a person or property on the public highways, due to the presence or operation of a motor vehicle

or motor bicycle, the operator of such vehicle or bicycle shall stop and, upon the request of a person injured or any person present, give his name and address, and; if not the owner of such motor vehicle or motor bicycle, together with his own name, the name and address of such owner.

Whenever a person operating a motor vehicle shall meet on a public highway any other person riding or driving a horse or other draft animal, or any other vehicle, the person so operating such motor vehicle or vehicles, or riding or driving a horse, or other draft animal, shall each seasonably turn to the right of the center of the beaten track of such highway so as to pass without interference. Any such person so operating a motor vehicle or motor bicycle shall, on overtaking any such horse, draft animal or other vehicle, pass on the left side thereof, and the rider or driver of such horse, draft animal or other vehicle shall, as soon as practicable, upon signal turn to the right of the center of the beaten track of such highway so as to allow free passage on the left. Any such person so operating a motor vehicle shall, at the intersection of public highways, keep to the right of the center of such intersection of such highway when turning to the right and pass to the right of the center of such intersection when turning to the left.

196. No effect or right to damages.] § 17. Nothing in this Act shall be construed to curtail or abridge the right of any person to prosecute a civil action for damages by reason of injuries to person or property resulting from the negligent use of the highways by the driver or operator of a motor vehicle or motor bicycle or its owner or his employé or agent, and in any action brought to recover any damages for injury either to person or property caused by running any motor vehicle or motor bicycle at a rate of speed greater than is reasonable and proper having regard for the traffic and the use of the way, or so as to endanger the life or limb or injure the property of any person, the plaintiff or plaintiffs shall be deemed to have made out a *prima facie* case by showing the fact of such injury and that the person or persons driving such motor vehicle or motor bicycle was at the time of such injury running the same at a speed greater than was reasonable and proper having a regard for the traffic and the use of the way or so as to endanger the life or limb or injure the property of any person.

197. Penalties.] § 18. Any person willfully violating the provisions of this Act shall, except as otherwise provided herein, upon conviction be fined in a sum not to exceed the amount hereinafter set forth:

For a violation of sections two and three and five to nine, inclusive, and section thirteen, fourteen and sixteen, or any of them,

twenty-five dollars. For a violation of section four not less than ten dollars (\$10) nor more than one hundred dollars (\$100). For violation of section ten, two hundred dollars. Any provision not herein specifically mentioned, one hundred dollars: *Provided*, that any offender who shall have been found guilty of a violation of any section of this Act and fined therefor, and who shall thereafter be convicted of a second violation of such section, may be fined in a sum not exceeding double the penalty herein provided for a first offense, and in addition thereto may have his certificate or license issued by the Secretary of State revoked for a period not exceeding three months, and for a third or subsequent violation of the same section of this Act the certificate or license may, in addition to the fine provided for the second offense, be revoked for a period not exceeding six months. Any person whose license shall have been revoked for a violation of any of the provisions of this Act and who shall drive or operate a motor vehicle or motor bicycle within the State of Illinois, during the period for which his said license shall have been revoked, or any person who, having once been convicted of a failure to comply with the provisions of this Act requiring a registration of motor vehicles or motor bicycles, or the examination and licensing of chauffeurs shall fail or refuse to comply with said provisions, shall be deemed guilty of a misdemeanor and on conviction may be fined in a sum not to exceed two hundred dollars, or imprisoned in the county jail for a period not exceeding thirty (30) days, or both, in the discretion of the court. All fines imposed for violation of any of the provisions of this Act shall be paid to the treasurer of the highway commissioners of the township or road district in which the offense is committed by the justice of the peace, clerk of the court, or other officers to whom the amount of such fines shall be by law required to be paid by the constable, bailiff, sheriff, or other officer named in any execution, issued for the collection of the same, and all money so received by the treasurer of the highway commissioners shall be used in repairing and improving the roads within such township or road district: *Provided, however*, that whenever any such violation shall occur within the limits of any city, village or incorporated town, or within the jurisdiction of any board of park commissioners, wherein no commissioners of highways exist or have jurisdiction, in such cases all fines imposed for the violation of any of the provisions of this Act shall be paid to the treasurer of such city, village or incorporated town or to the park commissioners within whose jurisdiction the offense is committed, by the justice of the peace, clerk of the court, or other officer to whom the amount of such fines shall be by law required to be paid by the constable, bailiff, sheriff, or other officer named in any execution issued for the collection of the same, and all money so received by the treasurer

of such city, village, or incorporated town, or park commissioners, shall be used in repairing and improving the roads or streets, within such city, village, incorporated town or park.

198. Disposition of registration fees.] § 19. All moneys received by the Secretary of State as registration fees and for the examination and licensing of chauffeurs as provided in this Act, less the cost of procuring and delivering the registration certificates, registration seals and number plates as provided in this Act, shall be deposited in the State treasury and set apart as a special fund to be known as the "Road Fund," which shall be used solely for the permanent improvement of the highways of the State outside of any incorporated city, town or village, and shall be subject to appropriation by the General Assembly for that purpose only. The amount appropriated and expended from such road fund in any county for the permanent improvement of the highways within its limits, in any one year, shall be in the same proportion as the amount levied in each county for road and bridge taxes bears to the total amount of the road and bridge tax levied in all counties of the State.

199. Public highways and local authorities defined.] § 20. Public highways shall include any highway, county road, State road, public street, avenue, alley, parkway, driveway or public place in any county, city, village, incorporated town or towns. Local authorities shall include all officers of counties, cities, villages, incorporated towns, towns or road districts as well as all boards, committees and other public officials of such counties, cities, villages, incorporated towns, or road districts.

200. Acts repealed.] § 21. "An Act defining motor vehicles and providing for the registration of the same and uniform rules regulating the use and speed thereof, and repealing an Act entitled: 'An Act to regulate the speed of automobiles and other horseless conveyances upon the public streets, roads and highways of the State of Illinois,' approved May 13, 1903, in force July 1, 1903, and to repeal all other Acts or parts of Acts inconsistent herewith," filed May 28, 1907, in force July 1, 1907, as amended by Acts approved June 10th and June 11th, 1909, in force July 1, 1909, is hereby repealed and all other Acts and parts of Acts inconsistent herewith, or contrary hereto are, so far as they are inconsistent or contrary, hereby repealed.

DIVISION III.

FARM DRAINAGE. (1)

AN ACT to provide for drainage for agricultural and sanitary purposes, and to repeal certain acts therein named. [Approved June 27, 1885. In force July 1, 1885.]

1. Drainage commissioners.
2. Clerk of commissioners—Duties—Drainage record.
3. Drainage districts treasurer—Bond.

1. **Drainage commissioners.] § 1.** *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That the commissioners of highways in each town in the several counties under township organization in this State shall be the drainage commissioners in and for all drainage districts in their respective towns, and shall be known by the corporate name of Drainage Commissioners of District No. — of the town of —, county of —, State of Illinois, and by that name shall be a body politic, and may sue and be sued, plead and be impleaded, contract and be contracted with, and all other drainage commissioners provided for in this Act shall be alike the corporate authorities of their respective districts.² See §§ 15, 15a and pp. 287, 290.

2. **Clerk of commissioners—Duties—Drainage record.] § 2.** The town clerk shall be the clerk of the drainage commissioners of his town; he shall be the custodian of all papers and records pertaining to drainage matters in his town, and shall keep in a well-bound book, to be known as the “Drainage Record,” a record of the proceedings of the commissioners, and shall enter at length therein all the findings and orders of the

(1) The Constitution of Illinois, on the subject of drainage, declares as follows: The General Assembly may pass laws permitting the owners of lands to construct drains, ditches and levees, for agricultural, sanitary and mining purposes, across the land of others, and provide for the organization of drainage districts, and vest the corporate authorities thereof with power to construct and maintain levees, drains and ditches, and to keep in repair all drains, ditches and levees heretofore constructed under the laws of this State, by special assessments upon the property benefited thereby. Const., Art. IV, § 31, as amended 1878, by vote of the people.

“A drainage district is a public corporation and the attorney-general, or the local state’s attorney, may, where rights of the public are involved, file an information in the nature of a quo warranto to test the legality of the organization of the district without regard to the time since its organization.” 176 Ill., 310.

(2) It is not a constitutional objection to the drainage law that it fails to provide for the election of the corporate authorities of a district when constructed. The constitutional provision relating to drainage districts, does not require that the corporate authorities who exercise the power of levying special assessments on lands benefited thereby, shall be elected by the people of the district. The special amendment of the Constitution, adopted in 1878, so far as it invades the former limitations of the Constitution, must prevail, and such limitations are not applicable to special assessments for drainage purposes. *Huston et al v. Clark et al*, 112 Ill., 344.

commissioners pertaining to the subject of drainage. See §§ 15, 15a and pp. 287-290.

3. Drainage districts—Treasurer—Bond.] § 3. In all districts, in counties under township organization, the supervisor of the town in which the district is situated shall be the treasurer of the district. When the district lies in two towns, the supervisor of one of the towns to be designated by the commissioners, shall be the treasurer. In all special drainage districts the county treasurer shall be the treasurer of the district. In all cases the treasurer shall give bonds to the commissioners, not less than double the amount of money likely to come into his hands in any one year, as such treasurer: *Provided*, that this shall not apply to the county treasurer when his official bonds are deemed sufficient.¹

RIGHTS OF DRAINAGE.

4. How owners may drain—General course—Damages.
5. Extending drains through land of others—Jurisdiction of justice—Summons.
6. Trial—Verdict—Damages—Judgment final.
7. When plaintiff deems best not to construct drain—Subsequent proceedings.
8. Commencing suit—Bond—Condition.
9. Plat to be filed—Failure to comply—Judgment.
10. Willful injury to drain—Penalty.

4. How owners may drain—general course—Damages.]

§ 4. Owners of land may drain the same in the general course

(1) *Form of District Drainage Treasurer's Bond.*

Know all men by these presents that we, A. B., C. D., and E. F., of the county of ———, State of Illinois, are held and firmly bound to the drainage commissioners of District No. ———, in the town of ———, county of ———, and State of Illinois, in the sum of [*here insert a sum not less than double the amount of money required to come into the hands of the treasurer in any one year*] which sum well and truly to be paid, we bind ourselves, our heirs, executors and administrators, jointly and severally firmly by these presents. Sealed by our seal and dated this ——— day of ———, A. D. 19—.

The condition of the above obligation is such that whereas the above bounden A. B. has become treasurer of Drainage District No. ——— above mentioned, now, therefore, if the said A. B. shall well and truly perform all the duties required of him as such treasurer, and shall promptly pay over and account for all money that comes to his hands as such, as required by law, then this obligation to be void, otherwise to remain in full force and effect.

A—— B——, [SEAL.]
C—— D——, [SEAL.]
D—— E——, [SEAL.]

The law does not provide as to sureties upon the district treasurer's bond nor as to the conditions of the bond, but the commissioners would themselves no doubt have general authority in this regard, under which they may require such bond as will be sufficient. The general custom is to require at least two sureties.

of natural drainage, by constructing open or covered drains, discharging the same into any natural water course, or into any natural depression, whereby the water will be carried into some natural water course, or into some drain on the public highway with the consent of the commissioners thereto; and when such drainage is wholly upon the owner's land, he shall not be liable in damages therefor to any person or persons or corporation.¹

5. Extending of drains through land of others—Jurisdiction of justice.] § 5. When it is necessary to extend drains on or through the land of others, to obtain a proper outlet, and the person desiring to drain purposes to construct such extension at his own expense, by means of an ample and properly made tile ditch, and the owners of the land refuse to consent thereto, the person or persons desiring to drain may cause a summons to issue from any justice of the peace in the county, in the same form, and returnable in the same manner, as other summons in civil suits, and proceedings shall be had thereon as in other civil causes before justices of the peace: *Provided*, if the owner or owners of such land do not reside in said county, or cannot be found therein, summons may be served by leaving a copy with the person or persons in possession or control of such premises.²

(1) *Form of Consent of Highway Commissioners to Extend Drain into Drain on the Highway.*

We, the commissioners of highways of the town of ———, county of ———, State of Illinois, do hereby consent that A. B., the owner of land in the vicinity of the highway hereinafter mentioned, may drain the same by constructing an open or covered drain whereby the water may be carried into the drain on the public highway and connecting therewith at or near [*here describe the place where the drain will connect with the drain on the highway with reasonable certainty.*]

Given under the hands of said drainage commissioners this ——— day of ———, A. D. 19—.

ATTEST.

L. M., Clerk.

G. H., } Commissioners
O. P., } of
R. S., } Highways.

(2) It is proper that the consent of the owner of land to allow the owner of adjoining land to extend a drain on or through his land should be in writing. The following may be the form of such consent:

Form of Consent of Owner to Allow Drain Extended Through His Land.

Know all men by these presents that I, A. B., for and in consideration of the sum of one dollar [*or such sum as may be agreed upon*], to me in hand paid by C. D., do hereby consent that he, the said C. D., may construct a drain through the following lands owned by me, [*here describe the land with reasonable certainty,*] said drain to commence, [*here describe the route of the drain if necessary, and place of termination; describe also the kind of drain to be constructed,*] said drain to be completed on or before the ——— day of ———, A. D. 19—.

Witness my hand and seal this ——— day of ———, A. D. 19—.

A—— B——, [SEAL.]

6. Trial—Verdict—Damages—Judgment final.] § 6. The justice, or jury if a jury is empaneled, shall hear the evidence, and if they find such drain, if constructed in the manner proposed, would not empty into a natural water course or natural depression, whereby the water would be carried into any natural water course or any drain on a public highway, by consent of the road commissioners, they shall find for the defendant; if they find such drain, if constructed, would empty into a natural water course or natural depression, whereby the water would be carried into any natural water course or any drain on a public highway, by consent of the road commissioners, they shall find for

Form of Summons to Extend Drains Through the Land of Others.

State of Illinois, }
 ——— County, } ss.

The people of the State of Illinois to any constable of said county greeting:

You are hereby commanded to summon A. B. to appear before me at ———, on the ——— day of ———, at — o'clock —. M., to answer the complaint of C. D., alleging that the said A. B. refuses to consent to allow the said C. D. to extend a drain necessary through the land of him, the said A. B. to obtain a proper outlet in accordance with the statute in such case made and provided, and hereof make due return as the law directs.

Given under my hand this ——— day of ———, A. D. 19—.

John Doe, J. P.

In this State the same rule is applied to surface water flowing in a regular channel as is applied to a water course. The owner of the dominant heritage, or higher tract of land, has the right to have the surface water falling or coming naturally upon his premises, pass off the same through the natural drains upon and over the lower, or servient lands; and the owner of the dominant heritage may, by ditches or drains, drain his own land into the natural and usual channel, even if the quantity of water thrown upon the servient heritage is thereby increased. Where two tracts of land adjoining each other are so situated that the water falling or collected by melting snow and the like upon one, naturally descends upon the other, it must be suffered by the owner of the lower one to be discharged upon his land, if desired by the owner of the upper field. The owner of the upper field in such a case, has a natural easement, as it is called, to have the water that falls upon his own land flow off the same upon the field below, which is charged with a corresponding servitude in the nature of dominant and servient tenements. The owner of the upper field cannot construct drains or ditches so as to create new channels for water in the lower field, but he may make such drains for agricultural purposes on his own land as may be required by good husbandry, although by so doing the flow of water may be increased in a regular, well defined channel, which carries the water from the upper to the lower field. The owner of land upon which there is a pond, in which is collected the surface water, only, from rains and melting snow, when good husbandry so requires, may drain the same by an artificial drain constructed upon his own land, whereby its water is thrown into the same outlet or natural drain it was accustomed to take before, when the pond was full, notwithstanding the flow of water over a servient tract of land may thereby be increased. *Peck et al v. Herrington*, 109 Ill., 611.

Concerning summons in civil suits the statute on this subject provides that the justice shall specify therein a certain place, day and hour for the trial, not less than five nor more than fifteen days from the date of such summons, and that every summons shall be served at least three days before the day of trial mentioned therein, by reading the same to the defendant. See Haines' Treatise, new ed., p. 373.

On the subject of proceeding under the above section of the drainage laws, which provides that the same shall be had as in other civil cases before justices of the peace, see Haines' Treatise, new ed., under the head of "Commencement of Suits and the Service and Return of Process," "Appearance of the Parties," "Trials and Incidents Thereto."

Subpoenas for the attendance of witnesses may issue as in other cases before justices of the peace.

the plaintiff or plaintiffs, and shall allow the defendant or defendants such actual damages only as will be sustained by entering upon the land and constructing such drain. The judgment shall be final and conclusive between the parties until after the expiration of two years from the finding in the former case.¹

7. When plaintiff deems it best not to construct drain—Subsequent proceedings.] § 7. If, after judgment, the plaintiff

(1) The law does not require that the person designated as plaintiff, or person desiring to extend a drain through the land of another shall file any written complaint with the justice setting forth his case. It contemplates, however, under § 6, that the claim of the plaintiff or party moving will be made to appear by the evidence which he offers before the justice so that a formal statement thereof may in general be dispensed with in the first instance.

Form of Docket Entry in Case of Constructing Drain over Land of Another.

State of Illinois, }
 County, } ss. In Justice's Court. Before E. F., Justice.
 A— B—, }
 vs. } Proceeding under Drainage Law to Extend drain.
 C— D—, }

A. D. 19—, *Aug. 1st*.—Summons issued, returnable *August 6th*, A. D. 19—, at *one o'clock P. M.* and delivered to L. M., constable. Plaintiff having first filed satisfactory bond in the sum of \$50, for costs and damages and plat of land to be drained.

Aug. 6th.—Summons returned by L. M., constable, personally served by reading the same to the defendant *Aug. 5th*, A. D. 19—.

Aug. 6th.—Parties appear.

The plaintiff being the owner of land in drainage district No. —, town of —, county of —, and desiring to extend the drain from his land through the land of the plaintiff to obtain a proper outlet at his own expense, complains that the defendant refuses to consent thereto.

The following persons were empanelled and sworn as jurors, viz: [*here set forth the names of the jurors.*]

Upon hearing the evidence the jury find such drain, if constructed in the manner proposed, would not empty into natural water course [*or natural depression whereby the water would be carried into any natural water course or any drain on the public highway by consent of the road commissioners,*] they therefore find for the defendant, [*or the jury find such drain, if constructed, would empty into a natural water course or natural depression whereby the water would be carried into any natural water course or any drain on the public highway, by consent of the road commissioners, and therefore find for the plaintiff and allow the defendant — dollars actual damages as will be sustained by entering upon his said land and constructing such drain. It is therefore considered by the court that the defendant have and recover of the plaintiff the sum of — dollars damages allowed to him as aforesaid with costs of suit.*]

On the subject of Docket Entries, see Haines' Treatise, new ed., p. 689.

The words "find for the plaintiff" or "find for the defendant," in § 6, it seems are not to be understood in the sense in which these terms are generally used in judicial proceedings. These terms in this case refer merely to the finding as to the right of the plaintiff, or party moving to extend his drain over the land of the defendant or opposite party, so that a finding in favor of the plaintiff gives to the defendant or opposite party a judgment for the amount of damages found to his land.

or plaintiffs in such suit shall deem it best not to construct such drain, they may so state upon the docket of the justice, at the foot of such judgment, and pay all costs of such trial, but shall not again be permitted to commence a suit for the same purpose, until after the expiration of one year from the rendition of the judgment; if they desire to construct such drain, they shall first pay to the justice the judgment and costs taxed against them, and may thereupon enter upon such premises and construct such drain, and may thereafter at all times, in proper season, enter upon said land for the purpose of repairing such drain; and it shall be his or their duty to keep it in good repair, and this right and duty shall pass to the heirs or assigns of the lands for the benefit of which the drain is constructed: *Provided*, that if the person or persons constructing such drain, or repairing the same, shall unnecessarily cause any damage to the owner or owners of such land, they shall forfeit and pay to such owner or owners three times the amount of such damage, to be recovered in any form of action.

8. **Commencing suit—Bond—Condition—Witnesses.]** § 8. Before any person or persons shall be permitted to commence an action as provided for herein, they shall file a bond in a sum not less than fifty dollars, with security to be approved by the justice, conditioned that they will pay all costs legally accruing in said cause, and all damages, if damages are awarded therein, within sixty days after the rendition of judgment, or pay all costs and abandon the construction of such drain in the manner provided by this Act, within the same time. If the defendant or defendants procure the attendance of any witnesses not necessary to a proper defense, all the costs of such witnesses and of subpoenaing the same shall be taxed to the defendant or defendants.¹

(1) *Form of Bond for Costs in Suit before Justice.*

Know all men by these presents that we, A. B., C. D. and E. F., of the county of —, and State of Illinois, are held and firmly bound unto [*here insert the names of the defendant in suit to be commenced,*] their heirs, executors, administrators and assigns for the sum of — dollars, which sum well and truly to be paid, we bind ourselves, our heirs, executors and administrators, jointly, severally, and firmly, by these presents. Sealed with our seals and dated this — day of —, A. D. 19—.

The condition of the above obligation is such that whereas the above bounden A. B. is about to cause a summons to be issued by G. H., a justice of the peace of the county of —, and State of Illinois, against [*here*

9. Plat to be filed—Failure to comply—Judgment.] § 9. Prior to issuing the summons in commencing any suit under this Act, the plaintiff or plaintiffs shall file with the justice a sketch, or plat, of the land to be drained, and that of all other persons across or upon which such drain is to be constructed, showing the starting point of such drain and its proposed course, across or upon the land of others, and the point of its discharge; and such plat shall be kept by the justice with the other papers in said cause. A failure to comply with the provisions of this section shall be sufficient cause for the dismissal of the suit at any time before the trial is entered upon. If the judgment is for the plaintiff the justice shall file the papers and map with the town clerk, to be recorded on the drainage record.

10. Willful injury to drain—Penalty.] § 10. If any person or persons shall willfully fill up, injure or destroy any drain constructed as herein required, or willfully prevent or delay the construction of any drain in the manner provided by this Act, such person or persons shall be deemed guilty of a misdemeanor, and, upon conviction thereof, for the first offense, shall be fined in the sum of not less than twenty-five dollars; nor more than one hundred dollars; and for the second offense shall be fined in the sum of not less than fifty dollars, nor more than two hundred dollars; and for each subsequent offense shall be fined not more than two hundred dollars and confined in the county jail for not less than thirty days nor more than one year.

insert the names of the defendants] that proceedings may be had to determine the right of the above bounden A. B. to extend a drain through the land of the said [*here insert the names of the defendants*] under the statute concerning drainage in such case made and provided. Now if the said A. B. shall pay all costs legally accruing in said cause and all damages, if damages are awarded therein, within sixty days after the rendition of judgment or pay all costs and abandon the construction of such drain in the manner provided by the act for drainage for agricultural and sanitary purposes within the same time, then this obligation to be void, otherwise to remain in full force and effect.

A. B., [SEAL.]
C. D., [SEAL.]
E. F., [SEAL.]

COMBINED DRAINAGE.

11. Cost proportionate—Petition—Proceedings.
12. Town clerk file petition—Notice.
13. Meeting of drainage commissioners—Evidence—Finding.
14. Commissioners view premises—Make survey and estimates.
15. Organization of drainage district.
16. Effect of organization of drainage district—Election—Officers.
17. Emergency.
18. Treasurer—Appointment and duties of.
19. Commissioners fix boundaries—Employ engineer.
20. System of drainage—Tile drains—Engineer.
21. Procure right of way—Releases—Damages.
22. Jury to assess damages—Venire—Notice to owners.
23. Trial—Challenges—Verdict—Transcript to be filed.

11. Cost proportionate — Petition — Proceedings.] § 11.
When the case involves a system of combined drainage in one town, and it is proposed that the cost shall be borne proportionately by the several parties benefited, a petition addressed to the drainage commissioners shall be presented to the town clerk, signed by a majority in number of the adult owners of land lying in a proposed district, and they shall be the owners in the aggregate of more than one-third of the lands lying in the proposed district, or by the owners of the major part of the land and who constitute one-third or more of the owners of the land in the proposed district, setting forth the boundaries, or a description of the several tracts of land thereof or fractions as usually designated: *Provided*, that where two land owners only are concerned, the petition may be signed by one, or by both of these, and the amount of land owned by the parties shall not be a condition. Said petition shall state that the lands lying within the boundaries of said proposed district require a combined system of drainage or protection from wash or overflow; that the petitioners desire that a drainage district may be organized, embracing the lands therein mentioned, for the purpose of constructing, repairing or maintaining a drain or drains, ditch or ditches, embankment or embankments, grade or grades, or all or either, within said district, for agricultural and sanitary purposes, by special assessments upon the property benefited thereby. The names of the owners of the several tracts of land together with their postoffice address shall be given so far as known.¹

(1) *Form of Petition to Commissioners for Drainage District.*

To the Drainage Commissioners of District No. —, of the town of —, county of —, State of Illinois:

The petition of the undersigned petitioners respectfully represents that

12. Town clerk file petition—Notice.] § 12. It shall be the duty of the town clerk to file said petition in his office, and he shall, within five days after the filing of said petition, give notice in writing to each of the commissioners of highways of such town, of the filing of such petition, and shall give notice, if there be two parties only interested in the drainage, to each of the two parties concerned, or if the petition is signed by two or more and more than two parties are involved, then the notice shall be given by posting written or printed notices, in at least three public places in or near the proposed drainage district, that a meeting of the drainage commissioners will be held at such place and time as the commissioners may decide upon, not

they desire that a drainage district may be organized, embracing the lands within the following boundaries, [or described as follows] to-wit: [*here describe the lands by boundaries, or other description as the law prescribes*] for the purpose of constructing, repairing and maintaining drains, embankments and grades, [*or as the case may be*] within said district for agricultural and sanitary purposes, by special assessments upon the property benefited thereby. That the lands lying within the boundaries of said proposed district require a combined system of drainage and protection from wash or overflow. That this petition is signed by a majority in number of the adult owners of land lying in said proposed district, and that they are the owners in the aggregate of more than one-third of the lands lying in the proposed district [*or by the owners of the major part of the lands, and who constitute one-third, or more than one-third, as the case may be, of the owners of the land in said proposed district*]. That hereunto annexed is a schedule forming a part of this petition, showing the names of the owners of the several tracts of land comprised in said proposed drainage district, together with their post office address, so far as known, with a description of the tracts of land owned by each.

Said petitioners therefore pray that you, the said drainage commissioners, will proceed and cause a drainage district to be organized as desired by said petitioners and expressed in this petition.

Dated this — day of —, A. D. 19—.

Form of Schedule of Owners of Land to be Attached to Petition for Drainage District.

The following is a correct statement of the names of owners of the several tracts of land, together with their post office address and description of said tracts mentioned in the petition to which the same is annexed.

NAME OF OWNERS.	DESCRIPTION OF LAND.	NUMBER OF ACRES.	P. O. ADDRESS.
John Jenkins	N. E. ¼ of N. E. ¼ Sec. 1	40	Smithtown.
James Jenkins	S. E. ¼ of N. E. ¼ Sec. 1	40	Jonestown.

In giving the names of owners of the several tracts of land in the petition, the law would seem to contemplate that a description of the tracts owned by each should also be set forth so that a complete case may be made and presented to the commissioners.

Any general description of the tracts of land in the schedule for purposes of the petition sufficient to point out the same, will suffice.

less than eight days nor more than fifteen days from the date of said notice, for the purpose of organizing said drainage district. He shall also file a copy of said notice in his office.¹

13. Meeting of drainage commissioners—Evidence—Finding.] § 13. It shall be the duty of the drainage commissioners to meet at the time and place mentioned in said public notice, and the clerk shall lay before them the said petition and all other papers in the case, and they shall thereupon proceed to ascertain whether the said petition contains the signatures of a majority of the adult persons owning land in said district, and if they are the owners of more than one-third of the land situate in said district, or by the owners of the major part of the land who constitute one-third or more of the owners of the land; and the affidavits of two or more credible signers of said petition that they have examined the same, are acquainted with the locality of the district, and that they believe that said petition is signed by a majority of the adult owners of land in said district, and that said signers are the owners of more than one-third of the lands in said district, or by the owners of the major part of the land, and who constitute one-third or more, of the

(1) *Form of Notice to Commissioners of Filing Petition for Drainage District.*

To A. B., one of the Commissioners of Highways of the town of ———, county of ———, and State of Illinois:

You are hereby notified that on the — day of ———, A. D. 19—, a petition addressed to the Drainage Commissioners of District No. —, of the town of ———, county of ———, State of Illinois, was presented and duly filed in the office of the town clerk of said town of ———, praying for the organization of a drainage district to be comprised of the lands bounded [or described] as follows, [*here describe the lands or boundaries thereof as set forth in the petition*].

Given under my hand this — day of ———, A. D. 19—.

G. H., Town Clerk.

A copy of the foregoing notice should be given by the town clerk to each of the commissioners. The town clerk should also file in his office a copy of each of all such notices as he may give under the above section.

Form of Public Notice of Filing Petition for Drainage District.

DRAINAGE NOTICE.

Notice is hereby given that a meeting of the Drainage Commissioners of District No. —, of the town of ———, county of ———, and State of Illinois, will be held at ——— at the hour of — o'clock on the — day of ———, A. D. 19—, as decided upon by said commissioners, for the purpose of organizing a drainage district comprised of lands bounded [or described] as follows, [*here describe the lands as set forth in the petition*] according to a petition therefor presented and duly filed in the office of the town clerk of the town of ——— aforesaid, on the — day of ———, A. D. 19—.

Given under my hand this — day of ———, A. D. 19—.

G. H., Town Clerk.

owners of land in the proposed district may be taken as *prima facie* evidence of the facts set forth in said petition as against the owners of lands in said district, and as conclusive evidence against all persons signing said petition, that they have accepted the necessity for the organization of such district hereunder. At such meeting, any other owners of land within said district shall be permitted to place their names on said petition, if they so desire. Any person owning land in said district, whose name does not appear on said petition, may, at said time and place, appeal and controvert any material statement in said petition; and for the purposes of such hearing, the said officers shall have full power to administer oaths to and examine all witnesses produced, and shall decide all such controverted questions at such time and place, and make a written statement of their finding, to be filed with the papers in the case. If they find that the petition has not been signed as herein required, they shall dismiss the case. For cause shown they may adjourn, but not for more than three days at any one time.¹

(1) *Form of Affidavit of Two Petitioners.*

State of Illinois, }
 ——— County, } ss.

A. B. and C. D. each being duly sworn, do each depose and say that they are signers to a petition on file in the office of the town clerk of the town of ———, county of ———, and State of Illinois, praying for the organization of a drainage district comprised of the lands bounded [*or described*] as follows, [*here set forth the lands as in the petition*] that they have each examined said petition and are acquainted with the locality of the district proposed, and that they believe that said petition is signed by a majority of the adult owners of land in said district, and that said signers are the owners of more than one-third of the land in said district, [*or by the owners of the major part of the land and who constitute one-third of the owners of land in the proposed district, or as the case may be*].

A. B.
 C. D.

Subscribed and sworn to before me this ——— }
 day of ———, A. D. 19—. }
 E. F., J. P. }

Form of Oaths to Witnesses to be Administered by Drainage Commissioners.

You do solemnly swear that the evidence you shall give in the proceeding now in hearing for the organization of a drainage district on the petition of L. M., and others, shall be the truth, the whole truth, and nothing but the truth, so help you God.

In administering oaths to witnesses it is considered proper to mention therein the case or proceeding in which the witness is to give evidence. In drainage proceedings under the above section, it will be a sufficient description of the proceedings to refer to the petition in the case, by mentioning the name of the first signer on the same, adding thereto the words "and others," as in the foregoing form. This will be a sufficient description as to the proceedings in the form of oath to be administered to a witness so as to call his attention to the matter in which he is called upon to testify.

14. Commissioners view premises—Make survey and estimates.] § 14. If the commissioners shall find in favor of the petitioners, as set forth in the last preceding section, they shall then adjourn their meeting to a time not less than eight days nor more than fifteen days, and publicly announce the same. The commissioners shall, in the meantime, go upon the lands included in the proposed district and personally examine the same; and they shall have power to employ a competent civil engineer, if in their opinion the services of an engineer be necessary, who shall thereupon proceed to make such survey and estimates, as the said commissioners may direct, and shall make and return to the said commissioners a map or plat of his survey, and a full report of all estimates so required of him.

15. Organization of drainage district.] § 15. At the time appointed for the adjourned meeting, the commissioners shall meet and examine the map and report of the engineer, if any engineer shall have been employed, and said commissioners shall

Form of Statement of Finding by Commissioners.

Whereas on the — day of —, A. D. 19—, a petition addressed to the Drainage Commissioners of District No. —, of the town of —, county of —, State of Illinois, was presented and filed in the office of the town clerk of said town of —, praying that a drainage district be organized embracing the lands within the following boundaries [*or described as follows*] to-wit: [*here describe the lands as in the petition*]. The petitioners in said petition representing that they desire that a drainage district may be organized, embracing the lands aforesaid, for the purpose of constructing, repairing and maintaining drains, embankments and grades, [*or as the case may be,*] within said district, for agricultural and sanitary purposes, by special assessments upon the property benefited thereby. That the lands lying within the boundaries of said proposed district require a combined system of drainage and protection from wash or overflow. And further, representing that the said petition is signed by a majority in number of the adult owners of the land lying in said proposed district, and that they are the owners in the aggregate of more than one-third of the lands lying in the proposed district [*or by the owners of the major part of the lands, and who constitute one third or more than one-third, as the case may be, of the owners of the land in said proposed district.*]

And said commissioners having decided to hold a meeting to consider said petition on the — day of —, A. D. 19—, at —, and due notice having been given of the filing of said petition, and of the time and place of the meeting of said commissioners, according to the statute in such case made and provided. And said commissioners having met at the time and place aforesaid, and having examined and considered said petition and all other papers in the case, and having examined all witnesses produced, do find in favor of [*or against*] the said petitioners.

In witness whereof said Drainage Commissioners have hereunto set their hands this — day of —, A. D. 19—.

Attest:

G. H., Clerk.

A. B., }
C. D., } Drainage
E., F., } Commissioners.

have power to change the boundaries of such proposed district from the boundaries given in petition, so as to take in land not embraced, or exclude lands taken into said proposed district, and shall permit additional signatures to be made to the petition by any adult person or persons owning land in, or owning land desired to be taken into such proposed district, to the end that a majority of the adult owners of land in the district as finally to be organized, and who shall be the owners in the aggregate of more than one-third ($\frac{1}{3}$) of such land, or by the owners of the major part of the land, and who constitute one-third or more of the owners of land in the proposed district, shall have signed the petition, which facts said commissioners shall find and put such finding in writing, and the same shall be filed and the clerk shall enter the same in his record, which finding shall be conclusive. And said commissioners may adjourn the meeting provided for in this section, not less than five (5) days at a time, and not more than fifteen (15) days in all, for the purpose of making the necessary examinations and findings, and shall publicly announce the time and place they so adjourned; and if, from their own examination, and said map and report if any there be, it shall appear that the lands included in the proposed district will be benefited for agricultural and sanitary purposes by the construction of a drain, or a combined system of drainage, they shall so find, unless they shall find from the evidence of witnesses then introduced, that the cost of the proposed work will exceed the benefits to be derived therefrom. And should they find in favor of the petitioners, or should a two-thirds ($\frac{2}{3}$) majority of the owners of lands owning more than one-half ($\frac{1}{2}$) of the lands lying in said proposed district still desire the formation of said district, and such desire shall be evinced by a failure to withdraw their signatures from the petition, the commissioners shall

There would seem to besome conflict or at least want of harmony in the provisions of § 13 and § 15 of this Act. § 13 provides for a full and complete hearing and examination into the questions presented by the petition praying for the organization of a drainage district, and a statement of the finding by the commissioners, which statement it is provided shall be filed with the papers in the case, whereupon an adjourned meeting of the commissioners is provided by § 14. § 15 then provides for another hearing upon the petition at said adjourned meeting, involving, it would seem, a rehearing of the whole subject considered at the first meeting under § 13. § 15, however, would seem to contemplate that at the adjourned meeting of the commissioners there may be changes made in the boundaries of the proposed district, whereby lands described in the petition may be excluded, or other lands added to the district, and there may be added more signers to the petition; in which case a formal re-examination of the subject of the petition might be proper, and this second finding of the commissioners would seem to be for the purpose of covering or meeting the contingencies aforesaid; under other circumstances such second finding would be merely cumulative, and could add little or nothing to the finding of the commissioners in the first instance under § 13.

The law provides that the clerk of the drainage commissioners shall keep in a well-bound book, to be known as the "Drainage Record," a record of the proceedings of the commissioners and shall enter at length therein all findings and orders of the commissioners pertaining to the subject of drainage. See ante, § 2, p. 276

The following may be the form of the clerk's record of proceedings of the com-

enter on their record an order in writing, organizing said drainage district, and such district shall thereupon be declared fully organized. Each district shall be designated by a number, as Drainage district No. — in — township, — county, and State of Illinois. And when the commissioners shall have organized said district, they shall cause a map thereof, showing the boundaries thereof, to be made, and the same shall be filed with the other papers in the case. The signing of any petition referred to in this Act shall be taken as conclusive against the person so signing that they have accepted the provisions of this Act as to their assessments of benefits and damages thereunder.¹

missioners at their first meeting on petition for a drainage district, which can be varied according to the facts to suit the circumstance of each case.

*Form of Record of Proceedings of Commissioners at First Meeting on
Petition for Drainage District.*

State of Illinois, }
— County, } Board of Drainage Commissioners,
Town of — } District No. —.

A meeting of the Drainage Commissioners of District No. —, of the town of — was held at — on the — day of —, A. D. 19—, to consider the petition of L. M., and others, filed in the Drainage Commissioners clerk's office, on the — day of —, A. D. 19—, praying for the organization of a drainage district to embrace the lands bounded [or described] as follows: [*here set forth the lands as in the petition*]. Upon a full hearing on such petition, the commissioners find in favor of the petitioners, [*or as the case may be*], and thereupon make a written statement of their finding in the words and figures following to-wit: [*here insert the statement of the finding of the commissioners as filed with the clerk*]. And thereupon the meeting of the commissioners was adjourned to the — day of —, A. D. 19—, at — o'clock — M., at —, and the commissioners did then and there publicly announce the same.

(1) *Form of finding of Commissioners on Petition for Drainage.*

Whereas, on the — day of —, A. D. 19—, a petition addressed to the drainage commissioners of district No. —, of the town of —, county of —, state of Illinois, was presented and filed in the office of the town clerk, of the town of —, praying that a drainage district be organized embracing the lands within the following boundaries [*or described as follows,*] to-wit: [*here describe the lands as in the petition.*] The petitioners in said petition representing that they desire that a drainage district may be organized embracing the lands aforesaid, for the purpose of constructing, repairing and maintaining drains, embankments and grades, [*or as the case may be*] within said district for agricultural and sanitary purposes by special assessments upon the property benefited thereby. That the lands lying within the boundary of said proposed district require a combined system of drainage and protection from wash or overflow. And further representing that the said petition is signed by a majority in number of the adult owners of the land lying in said proposed district, and that they are the owners in the

16. Effect of organization of drainage district—Election—officers.] § 15a. Upon the organization of any drainage district as provided in section 15 of this Act, the duties and obligations of the commissioners of highways, as said drainage commissioners of such district shall cease as soon as drainage commissioners shall have been elected and qualified, as herein provided. It shall be the duty of the town clerk to call an election in each district in his township, including the new districts organized during the previous year, by giving ten (10) days' notice that an election will be held (specifying time and place), said notices shall be posted in three (3) conspicuous places in said district. Elections shall be held in the several drainage districts organized under this Act on the second Saturday in March of each year, between the hours of 2 and 6 o'clock P. M.

At the first election in each district there shall be elected three (3) commissioners, one for one year, one for two years, and one for three years, and annually thereafter, one drainage commissioner shall be elected who shall hold his office three years, and until his successor is elected and qualified. Every adult owner of land in the district, whether residing within or without the district, shall be a voter, and if a resident of the county in which the district or any part thereof lies, eligible to the office of drainage commissioner. Said elections shall be con-

aggregate of more than one-third of the lands lying in the proposed district.

And said commissioners having decided to hold a meeting to consider said petition on the — day of —, A. D. 19—, at —, and due notice having been given of the filing of said petition and of the time and place of the meeting of said commissioners according to the statute in such case made and provided. And said commissioners having met at the time and place aforesaid and having examined and considered said petition and all other papers in the case, and having examined all witnesses produced, did find in favor of the said petitioners.

And thereupon said commissioners having adjourned their said meeting to the — day of —, A. D. 19—, at — o'clock at — having publicly announced the same did meet at the time and place last aforesaid to further consider the premises, having in the mean time gone upon the lands included in the proposed district and personally examined the same, and having made such changes in the boundaries of such proposed district and permitted such additional signatures to the petition by adult owners of land as desired, said commissioners do find that said petitioners who have signed the petition as the same is now changed by additional signatures thereto, comprises a majority of the adult persons owning land in said proposed district [*or as the case may be.*] which proposed district according to changes aforesaid embraces the lands bounded [*or described*] as follows, to-wit: [*here describe the lands in conformity with the changes made.*]

In witness whereof said drainage commissioners have hereunto set their hands this — day of —, A. D. 19—.

Attest: A. B., Clerk.

[Signed by drainage commissioners.]

ducted after the manner provided by law governing school elections. Commissioners of highways shall act as judges and clerk of the first election held in any district; thereafter the drainage commissioners shall act as judges and clerk of elections, in their respective districts. If said commissioners be not present, it shall be competent for the electors present to select judges and clerk of said election. Returns of said election shall be made to the town clerk, who shall record the same in a book kept for that purpose. Said commissioners shall take the oath of office before some officer authorized to administer oaths. Said commissioners shall be known by the corporate name of Drainage Commissioners of —, District No. —, of the town of —, county of —, State of Illinois, and by that name shall be a body politic and corporate, and may sue and be sued, plead and be impleaded, contract and be contracted with, and shall be the corporate authority of their respective districts. Before entering upon their duties as herein provided, the drainage commissioners shall take and subscribe an oath substantially as follows, viz.:

We,, drainage commissioners of drainage district No. —, do solemnly swear (or affirm) that we will faithfully and impartially perform the duties required of us to the best of our understanding and judgment and make assessment of damages and benefits (or benefits as the case may be), in favor of or against the land in said district, according to law.

When a vacancy occurs amongst the drainage commissioners, elected under this Act, it shall be the duty of the surviving commissioner or commissioners to call an election to fill the vacancy. The commissioners shall give not less than ten (10) days' notice of the time when and place where the election will be held, and the ballot shall state that the commissioner or commissioners are being elected to fill a vacancy. [As amended by Act approved and in force February 27, 1907. Laws 1907, p. 273. See pp. 354, 355, §§ 1, 2.]

17. Emergency. § 2. Whereas there are now vacancies among the commissioners in drainage districts in the State incorporated

"The petition provided for in the drainage Act of 1901 is required to be presented to the township clerk and filed in his office, and it is not sufficient to leave the same in the office of petitioner's attorney until the time the order organizing the district is entered." 200 Ill., 33-4.

"§ 15a of the farm drainage Act as amended in 1895, providing that elections shall be held on the second Saturday in March of each year, between the hours of 2 and 6 o'clock p. m., applies to drainage districts lying in two townships as well as lying in one township." 196 Ill., 310.

In making changes by adding signatures to the petition and including additional tracts of land, the names should be added to the petition following those of the original petitioners, and the additional lands to be embraced in the district should be added to the schedule annexed to the petition. Whatever is done in this regard, the doings of the commissioners relating to the same should be shown either by the papers on file, or the record of proceedings kept by the town clerk.

(1) See *Patton v. People*, 229 Ill., 512; *People v. Morrell*, 234 Ill., 47.

under this Act, and there is no provision in the Act for the filling of such vacancies, therefore an emergency exists, and this Act shall be in force from and after its passage. [Added by Act approved and in force February 27, 1907. Laws 1907, p. 273.]

18. Treasurer—Appointment and duties of.] § 15b. The said Drainage Commissioners shall appoint a treasurer, who shall receive all funds of the Drainage District, paying the same out only on a written order signed by the chairman and countersigned by the clerk of the said Board of Drainage [Commissioners]. Said Commissioners shall fix the compensation of the said treasurer, which shall not exceed two (2) per centum of the amount paid out. The treasurer of said Drainage District before receiving any of said fund shall execute a good and sufficient bond, in double the amount that shall probably come into his hands as such treasurer, with two or more sureties, to be filed with the town clerk for the benefit of the drainage district. [Added by Act approved June 21, 1895. In force July 1, 1895. Laws 1895, p. 167.]

Record of Proceedings of Commissioners at First Adjourned Meeting.

Board of Drainage Commissioners, District No. ———.

Township of ———, County of ———, Illinois.

A meeting of the drainage commissioners of the district aforesaid was held at ———, on the ——— day of ———, A. D. 19—, pursuant to adjournment of meeting held on the ——— day of ———, A. D. 19—, for the purpose of further considering the matter of the organization of a drainage district on petition of L. M. and others. The commissioners having in the mean time gone upon the lands included in the proposed district and personally examined the same, and having caused a survey and estimates to be made, a map and report of which is returned, did proceed and examine said map and estimates and made the following changes in the boundaries of said proposed district [*here set forth such changes as are made, if any, and the proceedings had by the commissioners in this regard.*]

And thereupon said commissioners further considering the matter of said petition did find as follows, the same being put in writing, and duly filed, to-wit: [*here enter the finding of the commissioners filed.*]

And thereupon said commissioners adjourned the said meeting to the ——— day of ———, A. D. 19—, at ——— o'clock, at ———, for the purpose of making the necessary examinations and findings, did publicly announce the time and place to which they so adjourned.

Finding by Commissioners at Second Adjourned Meeting.

Board of Drainage Commissioners District No. ———.

Township of ———, County of ———, Illinois.

Whereas, on the ——— day of ———, A. D. 19—, a petition addressed to the drainage commissioners of district No. ———, of the town of ———, county of ———, State of Illinois, was presented and filed in the office of the town clerk of the town of ———, praying that a drainage district be organized embracing the lands within the following boundaries [*describe the lands as in the petition.*] The petitioners representing that they desire ———

19. Commissioners fix boundaries—Employ engineer.]

§ 16. In case the drainage prayed for embraces the lands of two parties only, the commissioners shall hold their first meeting on or near the lands in question, and they shall proceed to view the same, hearing the proofs and allegations of the parties on the merits of the case. If an adjournment be necessary to employ an engineer, or for other good cause, the adjournments shall not, in all, exceed ten days. If the commissioners shall decide in favor of drainage, they shall fix the boundaries of the drainage district to embrace such divisions or subdivisions of land of each party as will be benefited by the proposed drainage.

20. System of drainage—Tile drains—Engineer.] § 17.

Upon the organization of a drainage district, the commissioners shall go upon the land and determine upon a system of drainage, which shall provide main outlets of ample capacity for the waters of the district, having in view the future contingencies, as well as

[repeat the language of first or original finding from this point to and including the description of the lands in conformity with the changes made.]

And said commissioners having adjourned their meeting last aforesaid to the — day of —, A. D. 19—, at — o'clock, at —, for the purpose of making the necessary examinations and findings, having publicly announced the time and place thereof, and having met pursuant to adjournment last aforesaid, do find from their own examination that the lands included in the proposed district will be benefited for agricultural and sanitary purposes by the construction of a drain *[or combined system of drainage, as the case may be.]*

In witness whereof said drainage commissioners have hereunto set their hands this — day of —, A. D. 19—.

Attest: G. H., Clerk.

[Signed by drainage commissioners.]

Record of Proceedings of Commissioners at Second Adjourned Meeting.

Board of Drainage Commissioners, District No. —.

Township of —, County of —, Illinois.

A meeting of the drainage commissioners of the district aforesaid was held at —, on the — day of —, A. D. 19—, pursuant to adjournment of meeting, held on the — day of —, A. D. 19—, for the purpose of making the necessary examinations and findings, and having made a full examination into the matter, the said commissioners do find that the lands included in the proposed district would be benefited for agricultural and sanitary purposes by the construction of a drain or a combined system of drainage *[as the case may be]*, which finding is reduced to writing and is in the words and figures following, to-wit: *[here set forth the finding as made and signed by the commissioners.]*

Whereupon said commissioners do order that a drainage district be and the same is hereby organized in pursuance of the petition therefor, comprising the lands embraced in the following boundaries *[or lands described as follows]* to-wit: *[here set forth a description of the district by boundaries or description of the tracts of land embraced]*, and such district is hereby declared fully organized, and is designated as drainage district No. —, in — township, — county and State of Illinois.

the present. Preference shall be given to tile drains whenever these will accomplish the purpose, and when open drains are deemed necessary, if it be practicable, these shall follow boundary lines, and parallels or right angles as the case may be, provided the drainage shall not be impaired thereby. Unless the district is small, and the plans are manifestly of easy determination, a competent engineer shall be employed to locate and advise upon the character of the work to be done, and report in writing, with maps, profiles and estimates of cost, and in a general way, the benefits to accrue to the lands in the several localities of the district. The maps and papers showing the final determination, as to the system of drainage, shall be filed in the clerk's office and be recorded in the drainage record.¹

21. Procure right of way—Releases—Damages.] § 18. The commissioners shall then proceed to procure the right of way for said work from the owners of the land upon which the same may pass, so far as they can do so by agreement with said

A fair construction of sections 13, 14, 15, of this act would seem to be this, that at the first adjourned meeting under section 15, changes may be made in the petition, in which case it might involve a further finding of the commissioners upon this changed condition of facts and which might also necessitate a further survey and estimates in the case, and this might call for a second adjourned meeting as provided in section 15 at which a further consideration and finding by the commissioners is contemplated upon which a final order may be entered organizing the drainage district; but in case no changes are made in the petition at the first adjourned meeting then the whole subject may be disposed of and the drainage district organized at such first adjourned meeting. The various forms here given are adapted to the case where changes are made in the petition. In cases where no changes are made in the petition the forms can be varied to suit the occasion.

As presumptions are not usually indulged in by the courts in support of summary proceedings of this kind, to any great extent at least, it would seem to be proper that the findings by the commissioners as provided in the foregoing sections of this act should be supported by proper recitals in each case, showing a compliance with the law. In the various forms here given the principle aforesaid has been kept in view by full recitals embodying such as are considered essential or jurisdictional facts occurring in the proceedings.

By the constitution as amended by vote of the people at the November election in 1878 giving the Legislature power to provide for the organization of drainage districts and vest the corporate authorities thereof with power to construct by special assessment from property benefited thereby, there is no limitation upon the legislature as to the mode of forming such districts, or as to the agencies or instrumentalities to be used in their creation. An express grant of power to the legislature by organic law to do a certain thing without any words of limitation or restriction, carries with the law necessary and proper means to make the power effective, and the legislature in such case is the sole judge of the means to be employed to promote the end designed. *Huston et al. v. Clark et al.*, 112 Ill., 344, *Blake v. The People*, etc., 109 Ill., 504.

(1) *Form of Engineer's Report of Surveys and Estimates.*

To the Drainage Commissioners of district No. — of the town of —, county of —, State of Illinois:

The undersigned, a civil engineer, having been employed by your said commissioners to locate and advise upon the character of the work to be done in the drainage district aforesaid contemplated by said commissioners, do here report the survey thereof with maps, profiles and estimates of cost.

All of which is respectfully submitted this — day of —, A. D. 19—.

L. M., Civil Engineer.

owners, which release or releases of right of way shall be in writing, and shall be a perpetual bar to all claims for damages by the grantor or grantors, or their assigns, on account of the construction of such work. Such release or releases shall be filed in the town clerk's office, and recorded in the drainage record: *Provided*, that should the commissioners be compelled to pay damages for the right of way in any lands over which any work may run, by virtue of the finding of a jury called to assess damages, as hereinafter provided, that then and in that case they shall allow damages equitably to other owners of lands through which such work may be located, notwithstanding such owners may have released such right of way without adequate compensation.¹

22. Jury to assess damages—Venire—Notice to owners.]

§ 19. Should the commissioners be unable to procure the right of way by agreement with the owner or owners of any lands over which the work may be located, they shall file a statement in writing with some justice of the peace in the vicinity, requesting him to issue a *venire* for a jury, to assess the damages in such case or cases; and it shall thereupon be the duty of the justice to issue a *venire* for a jury of six (6) disinterested land

(1) Form of Agreement for Right of Way and Release of Damages by Owner of Land.

This agreement made this _____ day of _____, A. D. 19—, between the drainage commissioners of district No. _____, in the town of _____, county of _____, State of Illinois, and L. M., of _____, witnesseth, that whereas a drainage district has been organized in said town designated as district No. _____, comprising lands owned by said L. M., to-wit: [*describe the lands*], over which a drain is desired to be passed according to a plat and survey thereof, now on file in the clerk's office, and it is agreed between the parties aforesaid that the full amount of damages of said L. M. for right of way and in the construction of said drain according to said survey and plat are _____ dollars, and said L. M., in consideration of one dollar paid by said drainage commissioners does hereby agree to accept said sum in full payment of his damages as aforesaid, and to grant and release the right of way for said drain on payment thereof, and, which amount when paid and receipt thereof indorsed hereon, shall operate as a grant and release of the right of way aforesaid.

In witness whereof said parties have hereunto set their hands and seals the day and year first above written.

A. B., [SEAL.]

C. D., [SEAL.]

E. F., [SEAL.]

Drainage Commissioners.

L. M., [SEAL.]

The law contemplates that the commissioners will proceed at once and procure the right of way before any funds are raised for payment of damages. It cannot be expected that full grants and releases will be given by the owner of lands until his damages are paid. The foregoing form is suggested as the most convenient that can be devised to meet the peculiar provisions of the law in this regard.

owners to appear at his office at a day and hour therein named, not less than five (5) nor more than fifteen (15) days from the filing of such statement with the justice, for the purpose of assessing the damages in the case or cases mentioned. The justice shall cause a notice or notices in writing to be served upon the owner or owners of the lands in question, informing him or them of the time and place when the said case or cases will be tried. Said notices may be substantially in the following form:

To A. B.:

You are hereby notified that a jury has been called to meet at my office in ——— township, ——— county, on the ——— day of ———, A. D. 19—, at ——— o'clock — M., for the purpose of assessing damages in the matter of the drainage commissioners of ——— township, ——— county, against you; when and where you can appear and assert your rights in the premises, if you desire.

C. S. ——— J. P.

Said notice shall be served by a constable, not less than three (3) days before the time fixed for trial, in the same manner and with like effect as process in civil cases, and his return thereon shall show the manner such service was made, and for such service he shall be allowed the same fees as for service of process in civil cases: *Provided*, that where it shall be made to appear that any of such owners are non-resident, or unknown, notice of such proceeding shall be given by publication in some newspaper published in said county two (2) successive weeks prior to the time of such hearing, which notice shall be substantially in the form given above; and if any such owner shall be a minor, such notice shall be served upon him and also upon his guardian, if he shall have one who is a resident of said county: *Provided, further*, that the commissioners may commence the proceedings in the county court at any term thereof, either of common law or probate.¹

(1) *Form of Statement and Request by Commissioners to Justice for Venire.*
State of Illinois, }
——— County, } ss.

To R. S., Justice of the Peace:

The undersigned drainage commissioners of district No. —, in the town of ———, in the county aforesaid, having applied to A. B., the owner of lands in said drainage district No. —, to procure the right of way for a certain drain over said lands, over which the work of said drain has been located pursuant to the statute, and being unable to procure the right of way therefor by agreement with said A. B., we do request of you, said justice in the vicinity, to issue a *venire* for a jury to assess the damages in such case.

Witness our hands, this ——— day of ———, A. D. 19—.

A. B. }
C. D. } Drainage
E. E. } Commissioners.

23. Trial—Challenges—Verdict—Transcript to be filed.]
§ 20. When the jury shall appear, as provided in the foregoing section, the trial shall be conducted as other cases before a justice of the peace or county court, as the case may be. Either party may have the same number of challenges, and for the same causes as in other cases, before justices of the peace or the county court, as the case may be, and if notice shall not have been given according to law, or for any other good cause, the court may continue the case from time to time, till proper notice

Form of Venire for Jury.

State of Illinois, }
County, } ss.
The People of the State of Illinois to any constable of said county, Greeting:
We command you to summon six disinterested landowners having the qualifications of jurors to appear before me, at my office at ———, on the — day of ———, A. D. 19—, at — o'clock, —. M., for the purpose of assessing the damages sustained by A. B., owner of land over which the drainage commissioners propose to locate and construct a drain [*or combined system of drainage*] in drainage district No. —, in the town of — in said county, and have you then and there this writ.
Witness my hand, this — day of ———, A. D. 19—. *John Doe*, Justice of the Peace

The question is raised, whether the jury in this case should not consist of twelve persons, as in other cases where the compensation is not made by the state. The proceeding before the justice is not a trial according to the recognized definition of the term. That the legislature have by this act styled it a trial cannot change the manifest intention of the framers of the Constitution. See Const. Art. II, § 13.
As to manner of conducting cases before justices of the peace, challenges and empaneling juries, see Haines' Treatise on the subject of "Trial and Incidents Thereto." See also same book in regard to duty of constables under head of "Service and Return of Process," "Constable's Fees."
Objections to defective notices in proceedings under the Drainage Act will be waived by subsequent appearance. *Gilkerson v. Scott*, 76 Ill. R. 509.

Form of Verdict of Jury.

State of Illinois, }
County, } ss.
In Justice Court, before A. B.
Justice of the Peace.
In the matter of the assessment of damages consequent upon the construction of a drain [*as the case may be*] over the lands in drainage district No. —, in the town of ———, in said county, described and owned as follows, viz:

DESCRIPTION OF LAND.	OWNED BY

We, the jury, summoned to assess the damages in the above cause, and having taken the oath required by law, and having heard the evidence offered, as to the value of the lands proposed to be taken, and all damages conse-

shall have been given, or the case is ready for trial. The jury shall hear the evidence offered in the case as to the value of the land proposed to be taken, and all damages consequent upon the construction of the proposed work, and may go upon the premises for the purpose of viewing them; and they shall return as their verdict the amount of damages found, if any, in favor of the owner or owners and against the commissioners, and the justice of the peace or county judge shall enter judgment for

quent upon the construction of the proposed work, and having visited the lands [*if such is the fact*] over which the proposed improvement is to pass, to assess the damages that we deem the claimants are entitled to, as follows:

To O. P., on land above described owned by him, the sum of ——— dollars.

Given under our hands this ——— day of ———, A. D. 19—.

[*Signed by the Jurors.*]

It may be well in each separate verdict to set out a description of all the lands in question, with names of owners, as suggested in the preceding form, concluding with a separate verdict or assessment as to each owner.

Where a juror is discharged in the course of the proceeding and another substituted in his place without the consent, or in the absence of parties interested, it is a fatal error. *Gilkerson v. Scott*, 76 Ill. R., 509.

Form of Docket Entry of Justice in Proceedings to Assess Damages for Drain.

State of Illinois, }
 ——— County, } ss. Before C. S., Justice of the Peace.

In the matter of application of drainage commissioners }
 of district No. —, in the town of ———, for assess- }
 ment of damages of A. B., to land for drain. }

A. D. 19—, ——— Statement of drainage commissioners filed requesting jury to assess damages of A. B., to his land by reason of constructing drain over same; *venire* issued, day of hearing ———, A. D. 19—, at ——— o'clock, —, M.; notice issued to A. B. of time of impaneling jury; returned, served by constable as follows, [*give copy of return.*]

A. D. 19—, ——— Parties appear; *venire* returned and following jury empaneled, [*give names*]. Upon hearing the allegations and proofs of the respective parties the jury returned their verdict that [*set forth substance of verdict.*] It is therefore considered by the court that [*name of owner*] have and recover, to be paid by said drainage commissioners, the sum of ——— dollars as damages for *state for what*].

C. S., Justice of the Peace.

Form of Certificate to Transcript of Foregoing Docket Entry.

State of Illinois, }
 ——— County, } ss.

I, C. S., a justice of the peace in and for said county, do hereby certify that the foregoing is a true and correct transcript of the proceedings therein set forth as the same are entered and appear recorded in my docket, and that the same is correctly copied therefrom.

Given under my hand and seal this ——— day of ———, A. D. 19—.

C. S., Justice of the Peace. [SEAL.]

the amount of such verdict, which judgment shall be final and conclusive. Vacancies in the panel of jurors, from whatever cause, shall be filled the same as vacancies in other cases, but vacancies shall, in all cases, be filled by freeholders, and the same jury shall hear and determine all cases for which the *venire* was issued, and shall return separate verdicts as to each owner or joint owner; and the justice or judge shall thereupon file, in the office of the clerk of the drainage commissioners, a certified transcript of the proceedings before him in each case, which shall be recorded in the drainage record.

SPECIAL ASSESSMENT.

24. Special assessment for benefits by classification of lands—How made.
25. Ditch previously constructed—May be utilized.
26. Notice of meeting to hear objections.
27. Hearing objections—Proceedings—Appeal.
28. Appeals to county court.
29. Resolution to raise funds by special assessment.

24. Special assessment for benefits by classification of lands —How made.] § 21. As soon as the plans for the work have been determined, the commissioners shall proceed to make special assessments for benefits by classifying the lands in the district in tracts of forty acres, more or less, according to the legal or recognized subdivisions on a graduated scale, to be numbered according to the benefits to be received by the contemplated drainage. The tracts of land which will receive most and about equal benefits shall be marked one hundred (100), and such as are adjudged to receive less benefits shall be marked with a less number, denoting its per cent of benefit. This classification, when established, as hereinafter provided, shall remain as a basis for such levy of taxes as may be needed for the lawful and proper purposes of the drainage district. In districts heretofore formed, which have made one or more levy of taxes, and a new levy is required, the classification of lands on the graduated scale shall be made to conform as near as may be to the former proportionate assessment; but if the commissioners believe, from experience and results, that the former assessment was not fairly adjusted on the several tracts of land according to benefits, then the commissioners shall disregard the proportions of the former assessment and make the new classification in accordance with such proportions as should have been made originally: *Provided*, that in any district where a classification has once been made, and the commissioners believe

property liable to be taxed under this Act, and residing in the county, a written or printed notice of the time when, and place where they will meet to hear any and all objections that may be made to the classification of lands on the graduated scale, which notice shall be served, in case of residents in the county, not less than three (3) days before the time set for hearing, by delivering a copy thereof to the party to be served; and the commissioners shall cause to be sent by mail such notice to all owners who do not reside in the county, whose land is to be affected, in case their postoffice address is known to the commissioners, or any of them, or can be ascertained by the use of reasonable diligence; and in case the land of any non-resident is to be affected, then publication shall be made in some newspaper published in said county, for three (3) successive weeks prior to the time of such hearing, and such meeting to hear objections may be adjourned from day to day by public announcement of the commissioners, made at the meeting, until all objections are heard; and all persons duly notified of the first day of meeting, as hereinbefore provided in this section, shall take cognizance of all such adjournments without further notification. The affidavit of any credible person or persons, that he has or they have posted such notices hereinbefore required, and the certificate of the publishers of such newspaper as to such publication, shall be sufficient evidence of such facts.¹

27. Hearing objections—Proceedings—Appeal.] § 24. At the time of meeting for review the commissioners shall hear whatever objections may be urged by any person interested, and

NOTE.—It must be borne in mind that a record of the proceedings of the commissioners is required to be kept by the clerk in all cases. Whenever the commissioners meet and transact business, or make any orders, the proceedings should be entered in the drainage record. Forms for record of proceedings heretofore given, may be consulted for this purpose and used by changing the same according to the facts, and which will probably suffice as a precedent in all cases.

(1) *Form of Notice to Land Owners Affected.*

To ———: You are hereby notified that the Drainage Commissioners of District No. ———, of the township of ———, county of ———, State of Illinois, will meet on the ——— day of ———, A. D. 19—, at the hour of ——— o'clock, at ———, to hear any objection that may be made to the classification of lands on the graduated scale in said district, made by said commissioners for the purpose of special assessments for benefits in consequence of the construction of a proposed drain [or system of drainage] in the said district, when and where you can appear and make objections if you desire.

Dated this ——— day of ———, A. D. 19—.

Attest: G. H., Clerk.

[Signed by the commissioners.]

if satisfied that any injustice has been done in the classification of the several tracts of land, or any of them, they shall correct the same in accordance with what is right, but if not so satisfied, they shall leave the classification as first made, and enter an order to that effect.² Any person appearing and urging objections who is not satisfied with the decision of the commissioners, may appeal from their decision to the county court of the county in which the lands affected are situated, within ten days after the decision of the commissioners was rendered, by filing with the county clerk a bond with security conditioned to pay such tax as may finally be levied upon the land in question, and the costs occasioned by the appeal in case the commissioners shall be sustained by the court of appeal. [As amended by Act approved May 10, 1901. In force July 1, 1901. Laws 1901, p. 148.

28. Appeals to county court.] § 25. Appeals taken to the county court under the provisions of this Act may be heard at any term thereof:¹ *Provided*, That ten days has intervened from

(2) *Form of Order Confirming Assessment.*

State of Illinois, }
 — County, }
 — Township, }

We, the Drainage Commissioners of Drainage District No. —, of — township, having heard the objections of [*give the name of all persons objecting*], to the special assessment and classification of lands made by us for [*state the purpose of the assessment*] in Drainage District No. —, in said township, are of opinion that said assessment and classification are in accordance with justice and right, and we do hereby in all things confirm the same. Dated this — day of —, A. D. 19—.

Attest: L. M., Clerk.

[*Signed by the commissioners.*]

(1) *Form of Appeal Bond.*

Know all men by these presents, that we, A. B. and C. D., of — township, — county, State of Illinois, are held and firmly bound unto the drainage commissioners of District No. —, in the township, county and State aforesaid, and their successors in office, in the penal sum of — dollars, which sum well and truly to be paid we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Signed and sealed by us this — day of —, A. D., 19—.

The condition of this obligation is such that, whereas, the above bounden A. B. has appealed to the county court of the county aforesaid from a decision by the drainage commissioners of the aforesaid district No. —, confirming a special assessment and classification made against his land in said drainage district for the purpose of [*state the purpose*] which order of confirmation is dated the — day of —, A. D. 19—; now, therefore, if the above bounden A. B. shall pay, or cause to be paid, the amount of said assessment, and all costs occasioned by this appeal, in case said assessment shall be affirmed, then this obligation to be void; otherwise to remain in full force and effect. [Signatures and seals.]

Special assessment tax list of — [here insert name of district.]

the time of taking the appeal and the first day of the term, and if not ten days, then such appeal shall be heard at the next term of said court as herein provided, and the costs of such appeal may, at the discretion of the court, be divided between the drainage district and the owner of the land who may appeal from the classification of the commissioners. It shall be the duty of the county court to cause to be summoned twelve (12) landowners living outside of the drainage district, and who are not interested in any lands or work in said district, or of kin to any of the parties interested, to meet at the court house at a time set by the court for hearing any appeal or appeals that may be taken from the decision of the commissioners. The said twelve (12) land-owners shall be men who have practical knowledge of the costs and benefits of farm drainage, and shall be sworn in as a special jury to try the case on appeal. Should any of said land-owners fail to appear at the time named, or should any of those summoned be rejected under the exercise of the usual right of challenge, the court may cause to be summoned any other qualified land-owner or owners, as required by this section, to fill such vacancy or vacancies, or the case may be tried by six (6) qualified jurors, if both parties to the suit so agree. Whenever the special jury summoned to hear appeals shall have been sworn in as herein provided, it shall be the duty of the court to lay before them the classification as determined by the drainage commissioners, and they shall examine the same, and hear allegations and testimony in opposition to and in support of the same, and may, if requested by either party to the appeal, visit the district and view the lands. If they find the tracts of land in question are marked too high or too low in the classification, they shall correct the errors; but if no injustice has been done, they shall confirm the classification as made by the commissioners. Their final determination shall be made in writing, and filed with the records of the court. The classification, when established as herein provided, shall also be recorded with other papers on the drainage record: *Provided*, That if either party to such appeal shall be dissatisfied with the decision rendered by the special jury as above provided, the county judge may hear reasons for or against a further appeal to the circuit court of said county on the classification of the lands in question, and may, at his discretion, grant or refuse such appeal. If further appeal be not prayed for, or be refused by the county judge, then the decision rendered by the special jury in the county court shall be conclusive and final. If appeal to the circuit court be granted the classification as fixed in such court shall be final: *Provided, further*, That in all cases in which appeal is taken to

the circuit court, bond shall be given as in appeal to the county court, and the costs of such appeal shall be paid by the owner or owners of the land or lands so appealing in case the classification as fixed by the county court shall be sustained. The circuit judge shall cause to be sworn in twelve (12) jurors, qualified as required in appeals to the county court, and the appeal shall be tried in the same manner as in the county court, as nearly as may be, and the decision of such jury shall be conclusive and final, and no further appeal shall be granted. The classification, as determined and fixed in the circuit court, shall be entered in the drainage record of the district in which the land or lands are situated, and thereafter shall be the basis upon which assessments for benefits shall be made. [As amended by Act approved May 10, 1901. In force July 1, 1901. Laws 1901, p. 148.

29. Resolution to raise funds by special assessment.] § 26. The commissioners by resolution shall order such amount of money to be raised by special assessment upon the lands of the district as may be necessary, and such amount shall be apportioned among the several tracts in the name of the owner when known, according to acreage of each and its figure of classification on the graduated scale, so that each tract may bear its equal burden in proportion to benefits. They shall make out a special assessment roll, hereinafter designated tax list, setting down in separate columns the owners' names, when known, and when unknown stating unknown, a description of the land, the number denoting the classification, the tax, the damages allowed, if any, or any other credit to be given to the owner. The balance of tax over credits or of damages or other credits over the tax showing the amount due to the district by each land owner on the separate tracts, or, due to the land owner by the district, shall be set down in final columns. When completed the list shall be filed with the town clerk. The tax list may be substantially as follows.¹

“SPECIAL ASSESSMENT TAX LIST OF—[here insert name of district.]

Owners' Name.	Description of Land.				No. classifica- tion on scale	Tax Levied..		Total credits		Balance due District..		Balance due Owners..		Remarks.
	Sec.	Tp.	R.	Acs.		Dol.	Cts.	Dol.	Cts.	Dol.	Cts.	Dol.	Cts.	
.....

(1) See People v. Cary, 231 Ill. 502; People v. Warren, Ill. 518.

APPEAL TO COUNTY COURT.

- 30. Section 27 repealed by amending Act of May 1, 1901.
- 31. Appeal not to delay tax.
- 32. How tax may be paid.
- 33. Tax list—Supervisor to give bond as treasurer—Condition.
- 34. Duty of treasurer.
- 35. Delinquent list—Sale—Commissioners may purchase.
- 36. Collector to give bond—Treasurer may receive payment.
- 37. Divisions into sections—Letting of work.
- 38. Notice of letting—Bids—Contract.
- 39. Taxes credited on contract—Receipt.
- 40. Excess—How applied.
- 41. How money may be used.

30. § 27. [This section repealed by amending Act, of May 11, 1901.]

31. **Appeal not to delay tax.**] § 28. The taking of any appeal by any person or persons, as herein provided, shall not operate to delay the collection of any tax from which no appeal has been taken, nor delay the progress of the work.

32. **How tax may be paid.**] § 29. It shall be competent for the commissioners to order the tax to be paid in installments of such amounts and at such times as will be convenient for the accomplishment of the proposed work; otherwise the whole amount of such tax shall be payable thirty days after such confirmation, and shall be a lien upon the lands assessed until paid; and such taxes shall draw interest at the rate of six (6) per cent per annum from the time they shall become payable until they are paid, and such interest may be collected and enforced as part of the taxes.² [As amended by Act approved May 11, 1901. In force July 1, 1901. Laws 1901, p. 149.]

33. **Tax List—Supervisor to give bond as treasurer—Condition.**] § 30. Immediately after the commissioners shall have

(2) *Order for Payment in Installments.*

Ordered by the Drainage Commissioners that the tax levied in the district, in pursuance of resolution of the commissioners on the —— day of ——, A. D. 19—, and shown by special assessment tax list filed with the clerk on the —— day of ——, A. D. 19—, be paid in installments of \$—— each, on or before the *State the time of payment for each installment.*]

NOTE.—These orders must be entered in the drainage record, with proceedings and dates thereof.

filed their tax list, the clerk shall make out and certify to the treasurer a copy of said tax list; and the said treasurer shall execute a bond to the people of the State of Illinois for the use of all persons interested, in a sum not less than twice the amount of taxes levied, conditioned for the faithful performance of his duties as treasurer of said drainage district, and that he will faithfully account for all money that, by virtue of said office, shall come to his hands. Such bond shall be with such sureties as may be approved by the commissioners, and such bond shall be kept and preserved in the town clerk's office. In case the supervisor shall fail to give such bond, as treasurer, the commissioner may appoint a treasurer until the supervisor or his successor shall give such bond.¹

34. **Duty of Treasurer.]** § 31. It shall be the duty of the treasurer of every drainage district to keep, in proper books to be furnished him by the commissioners, an accurate account of all moneys received by him and all disbursements of the same. He shall pay out no money except upon the order of a majority of the commissioners, and he shall carefully preserve

(1) *Form of Clerk's Certificate to Treasurer of Copy of Tax List.*

State of Illinois, }
 County, } Drainage District No. —.
 Town of —, } To A. B., treasurer of Drainage District No. —.

I, C. D., clerk of said drainage district, do hereby certify that the foregoing is a true and correct copy of the original tax list filed by the drainage commissioners of said district, and now remain in my office.

Given under my hand this — day of —, A. D. 19—.

C. D., Clerk.

Form of Bond of Treasurer of Drainage District.

Know all men by these presents, that A. B., of the township of —, county of —, and State of Illinois, and C. D. and E. F., as sureties, are held and firmly bound unto the People of the State of Illinois for the use of all persons interested, in the penal sum of — dollars, which sum well and truly to be paid, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Signed with our hands and sealed this — day of —, A. D. 19—.

The condition of the above obligation is such that if the above bounden A. B. shall faithfully perform his duties as the treasurer of Drainage District No. —, in the township of —, county of —, and State of Illinois, and will faithfully account for all moneys that by virtue of said office shall come to his hands, then this obligation to be void, otherwise to remain in full force and effect.

A. B., [SEAL.]

C. D., [SEAL.]

E. F., [SEAL.]

This bond and the sureties approved this — day of —, A. D. 19—.

Attest:

L. M., Clerk.

G. H., }
 H. I., } Drainage
 J. K., } Commissioners.

on file all orders for the payment of money, and as often as required by a majority of the commissioners, shall render a correct account to them of all matters pertaining to his office, with the vouchers and other papers and records in his possession as such treasurer, verifying the same, and he shall turn over all books, papers, vouchers, money and property belonging to and in his hands or under his control as such treasurer, to his successor in office, and the commissioners shall have the right to examine the same at all times.¹

35. Delinquent list—Sale—Commissioners may purchase.]

§ 32. It shall be the duty of the treasurer of each and every drainage district, heretofore or hereafter organized, to make out a certified list of all delinquent lands upon which the tax or any installment or any part thereof remains unpaid, and the same shall be by him, on or before the 10th day of March next, after the same has become due, returned to the county collector of the county or counties in which such land shall lie. And it shall be the duty of the collector to whom such return is made, to transfer the amount thereof, from such return, to the tax books in his hands, setting down therein, opposite the respective tracts or lots, in proper columns prepared for that purpose, the amount thereof against each tract or lot, and the like proceedings shall be had, and with like force and effect in the collection of such delinquent tax or installment, and the sale of said lands for the non-payment thereof, as in ordinary collections of State and county taxes and the sales of real estate by them, for such non-payment and of redemption from such sales. At the sale of lands for any delinquent drainage assessment or tax, the commissioners may become the purchasers or may designate or appoint some person to attend and bid at such sale on behalf of said district.²

(1) Form of Order of Drainage Commissioners on Treasurer.

State of Illinois, }
County, } ss. Drainage District No. —.
Town of —, } To the Treasurer of Drainage District No. —.
Pay to A. B. or order the sum of — dollars for [*here state on what account order is drawn.*]
Dated this — day of —, A. D. 19—. R. L., }
E. S., } Drainage
H. P., } Commissioners.

(2) Form of Delinquent List.

State of Illinois, }
County, } ss. Drainage District No. —.
Town of —, }

36. Collector to give bond—Treasurer may receive payment.] § 33. When the certified list of such delinquent lands has come into the hands of the county collector, the said collector, unless he is the treasurer of the district, shall execute to the drainage commissioners for the use of said district a bond in a sum not less than double the amount of the delinquency as shown by said list, conditioned for the faithful performance of his duties as collector of said delinquency, and that he will faithfully account for all moneys that shall come into his hands by reason of the delinquent tax or installments, which bond shall be, with such securities as may be approved by the commissioners, filed in the clerk's office, and recorded in the drainage record. Notwithstanding the return of such delinquent list the treasurer of the drainage district may receive payment of any such delinquent assessment or tax, interest and costs, and receipt for the same, but shall keep a memorandum thereof, and on or before the day of sale fixed by the county collector for sale of lands for non-payment of taxes, shall present said memorandum or list to the county collector, for the purpose of having the same checked or marked paid on the delinquent list in his hands, and all amounts collected by the county collector by sale or otherwise, after deducting his fees, shall be paid over to the treasurer of said drainage district, except as otherwise provided herein.¹

I, A. B., treasurer of the drainage district No. —, of the town of —, county of —, and State of Illinois, do hereby certify that the following is a correct list of delinquent lands upon which the assessments remain unpaid for [*here state for what*].

NAMES OF OWNERS.	DESCRIPTION OF LAND.	AMOUNT ASSESSED AND DUE.

In witness whereof I have hereto set my hand this — day of —, A. D. 19—. A. B., Drainage District Treasurer.

(1) *Form of Bond of County Collector to Drainage Commissioners.*

Know all men by these presents that we, A. B., C. D., and E. F., are held and firmly bound unto the drainage commissioners of drainage district No. —, in the town of —, county of —, State of Illinois, for the use of said district, in the sum of — dollars, which sum well and truly to be paid, we bind ourselves, our heirs, executors and administrators, jointly, severally, and firmly by these presents.

Sealed with our seals and dated this — day of —, A. D. 19—.

The condition of the above obligation is such, that whereas the above bounden A. B., county collector of the — county aforesaid, did on the — day of —, A. D. 19—, receive from the treasurer of drainage dis-

37. Divisions into sections—Letting of work.] § 34. The said commissioners, when they have procured the right of way for the proposed work, may divide the ditch or ditches into sections a quarter of a mile in length, except the remainder or remainders, after taking out as many full sections as the work contains, which remainder or remainders may be let with the adjoining section, or separately, as the commissioners may think best; or they may let the entire work in one or more contract: *Provided*, that in case the work is on the farms or lands of two parties only, the amount on each shall be let separately, and the owners of the land shall have the preference, where the bids are equal, to construct that part belonging to his own land, and this rule may be applied to a larger number, if the commissioners shall unanimously agree to the same.

38. Notice of letting—Bids—Contract.] § 35. As soon as practicable the commissioners shall cause notice to be given of the time and place of the letting, and of the kind and amount of work to be done, and where plans of the same may be seen, by publication for twenty days in some newspaper printed or published in said county. Said bids shall be under seal, and the commissioners may reject any and all bids, and may continue the letting from time to time, if, in their judgment, the same be necessary. If the cost of the entire work will not exceed five

trict No. — aforesaid, a certified list of all delinquent lands upon which the tax or any installment, or any part thereof remains, as appears by the certificate of said treasurer thereto, unpaid in said district, now, therefore, if the said A. B. shall faithfully perform his duties as collector of said delinquency, and shall faithfully account for all moneys that shall come into his hands by reason of the delinquent tax or installment aforesaid, then this obligation to be void, otherwise to remain in full force and effect.

A. B., [SEAL.]
C. D., [SEAL.]
E. F., [SEAL.]

Approved by us, the drainage commissioners of district No. —.

O. P., }
R. S., } Drainage
L. M., } Commissioners.

Form of Drainage District Treasurer's Certificate of List of Delinquent Lands.

State of Illinois, }
County, } ss. Drainage District No. —.
Town of —, }

I, A. B., treasurer of drainage district No. — aforesaid, do hereby certify that the foregoing [or annexed] is a correct list of all delinquent lands in said drainage district upon which the tax assessed thereon, or any installments, or any part thereof remains unpaid.

Given under my hand this — day of —, A. D. 19—
A. B., Drainage District Treasurer,

hundred dollars (\$500), the commissioners shall let the same at such time and in such manner as they may think best. Said commissioners shall not, during their term of office, be interested, directly or indirectly, in any contract for the construction, repair or maintenance of any work in such drainage district, nor in the wages nor supplies to men or teams employed on any work under their jurisdiction. Any person or persons taking any work under contract, shall, on the completion thereof, according to contract, be paid for such work by the treasurer, upon the order of the commissioners. If any person or persons to whom any portion of said work shall be let as aforesaid, shall fail to perform said work, the same shall be re-let in such manner as the commissioners may think best.¹

39. Taxes credited on contract—Receipt. § 36. In case any person from whom taxes are due contracts to do any work, and said work is done according to contract, the commissioners shall give said person a receipt for so much of said tax as said work amounts to, and said receipt may be received by the treasurer as payment of so much of said tax.

40. Excess—How applied. .§ 37 All excess, if any, of allowances for right of way and damages over the amount of tax against the same person, shall be paid or tendered to the owners thereof, before the commissioners shall be authorized to enter upon said lands for the construction of any work thereon; in case the owner is unknown, or there shall be a contest in regard to the ownership of the land, or the commissioners cannot, for any reason, safely pay the same to the owner, they may deposit the same with the clerk of the county court, and the court may order the payment thereof to such party as shall appear to be entitled to the same.

41. How money may be used.] § 38. The commissioners may use money belonging to the district for the purpose of compromising suits and controversies arising under this Act, and in employment of all necessary agents and attorneys in the prosecution or defense of said operations, and to pay all necessary employes: *Provided*, the acts of the commissioners shall be uniform as to the rights of all persons and property.

(1) *Form of Notice of Letting Contract.*

Public notice is hereby given that the drainage commissioners of district No. —, of the town of —, county of —, and State of Illinois, will receive bids, under seal, up to noon of the — day of —, A. D. 19—, at —, for the [*here state kind and amount of work to be done*]. Plans of said work are on file at [*state where*], where the same may be seen. The said commissioners reserve the right to reject any and all bids.

Dated at —, this — day of —, A. D. 19—.

Attest:

[*Signed by the Drainage Commissioners.*]

L. M., Clerk

GENERAL DUTIES OF COMMISSIONERS.

42. Authority to sell land—Penalty.
43. May use public highway—Benefits—Tax.
44. Notice to construct bridge—Appeal.
45. When work completed—Repairs and maintenance.
46. Rights of land owners—Enlargement of boundaries of district—Proceedings.
47. Sub-districts—Right of.
48. Willful injury to drain—Penalty—Damages.
49. Damages to drain by animals—Liability of owner.
50. Liability of commissioners for failure to perform duties—Penalty.
51. Commissioners and treasurer to make annual report.
52. District—How dissolved—Assessments.

42. Authority to enter lands.—Penalty.] § 39. The commissioners, may authorize any employes to go upon the lands lying within said district, for the purpose of examining the same and making surveys; and after payment or tender of compensation allowed, may authorize all contractors, with their servants, teams, tools, instruments or other equipments to enter for the purpose of constructing such proposed work, and may ever thereafter enter upon said lands as aforesaid, for the purpose of maintaining or repairing such work, doing no more damage than the necessity of the occasion may require; and any person who shall willfully prohibit or prevent any of the aforesaid persons from entering upon such lands for the purpose aforesaid, shall be fined in a sum not to exceed twenty-five dollars (\$25) per day, for such hindrance, to be collected as other fines.

43. May use public highway—Benefits—Tax.] § 40. The commissioners shall have the right to use any part of the right of way of any public highway for the purpose of the work to be done, provided such use will not permanently destroy or materially impair such public highway for public use; and if in the construction of said work any public highway or railroad or any part of the same will be benefited, the commissioners may assess to such public road or railroad such sum or sums as will be just and equitable for such public road or railroad to pay in proportion to the benefits received; which shall be determined by estimating the amount of benefits to the entire district, including the benefits to such railroad or public road; and also the benefit to the railroad or the public road, then the fractional figures expressing the ratio between the sum of the benefits for the whole district and the sum found to be the benefits to the railroad or public road, shall express the proportional part of the corporate taxes of the district to be paid by such railroad

or public road, as the case may be. Such proportional classification shall be subject to like review and appeals, as is provided for individual land owners. The amount of such road tax shall be paid out of the road and bridge tax of the town or district in which the public highway or part benefited lies.¹

44. **Notice to construct bridges—Appeal.] § 40½.** The commissioners shall have the power and are required to make all necessary bridges and culverts along or across any public highway or railroad which may be deemed necessary for the use or protection of the work, and the cost of the same shall be paid out of the road and bridge tax, or by the railroad company, as the case may be: *Provided, however*, notice shall first be given to the road or railroad authorities to build or construct such bridge or culvert, and they shall have thirty days in which to build or construct the same, such bridges or culverts shall in all cases be constructed so as not to interfere with the free flow of water through the drains of the district. Should any railroad company refuse or neglect to build or construct any bridge or culvert as herein required, the commissioners constructing the same may recover the cost and expenses therefor in a suit against said company before any justice of the peace or any court having jurisdiction, and reasonable attorney's fees may be recovered as a part of the costs. The proper authorities of any public road or railroad shall have the right of appeal the same as provided for individual land owners.

45. **When work completed—Repairs and maintenance.] § 41.** After the completion of the work the commissioners shall thereafter keep the same in repair, and if they find by reason of error

(1) *Form of Notice to Railroad Authorities to Build Bridges.*

To the authorities of the ——— railroad:

You are hereby notified that a bridge [*or culvert*] is deemed necessary to be made on said railroad [*or as the case may be*] at [*here describe the place*] for the use [*or protection*] of the work of a combined system of drainage [*or, as the case may be*], being constructed in the vicinity, under the charge and direction of the drainage commissioners of district No. —, in the town of ———, county of ———, State of Illinois, and that you are required, in pursuance of the statute in such case made and provided, to build [*or construct*] such bridge [*or culvert*] within thirty days. In default thereof, the said commissioners will proceed and construct the same at the cost and expense of said railway company, as the law provides.

Given under our hands, this ——— day of ———, A. D. 19.

Attest: G. H., Clerk.

[*Signed by the Commissioners.*]

Whenever the proper public authorities either construct a bridge on the line of a public road, or accept a bridge there built by others which is used by the public, the county, township or adjoining townships represented by such authorities must keep such bridge in repair. 158 Ill. 197.

in locating or constructing the ditches, or any of them, or from any other causes the lands of the district are not drained or protected as contemplated, or some of them receive partial or no benefit, they shall use the corporate funds of the district to carry out the original purpose to the end that all the lands, so far as practicable, shall receive their proper and equal benefits as contemplated when the lands were classified. If it be necessary to clear and enlarge any natural or artificial channels lying beyond the boundaries of the district to obtain a proper outlet, the commissioners shall use the corporate funds for this purpose, and if the necessary privileges can not be obtained for this by agreement with the landowners or the commissioners, if the land or lands through which such outlet must be made are within another organized district, the commissioners may acquire the same by condemnation under the Act for exercising the right of eminent domain: *Provided*, In all such cases, if sufficient funds are not on hand, the commissioners shall make a new tax levy: *Provided, further*, That the commissioners of any drainage district organized under the laws of this State who, to secure a proper outlet, have enlarged or improved, or may hereafter enlarge or improve any natural or artificial channel lying beyond the boundaries of the district, as provided for in this Section, upon lands owned by private individuals, or which may be, or hereafter become a part of another organized district, and who by such work have or may hereafter benefit the whole or a part of such lands, whether the privilege to so enlarge or improve was or may be obtained by agreement with the owners of the lands or the commissioners, if such lands are a part of another organized district, or acquired by condemnation under the Act for the exercise of the right of eminent domain, the commissioners of the district above who have or may hereafter enlarge or improve such natural or artificial channel beyond the boundaries of their district, may collect from said land-owner or owners or other drainage district or districts, as the case may be, such an amount as may be considered a fair compensation for the benefits received by the lands lying below the district which has or may hereafter extend its work beyond its boundaries to secure a proper outlet as herein provided. The amount representing such benefits may be fixed by agreement between the commissioners of the upper district and the owners of lands lying below the upper district, or the commissioners of the lower district if the lands are so organized: *Provided*, That if such agreement can not be made as will be satisfactory to the parties interested, the commissioners of the upper district shall be empowered to bring suit in the name of the people of the district

against the owners of the lands lying below, or the commissioners of the lower district if such lands are organized as a drainage district, in the circuit court of the county in which such drainage district is organized, to recover such an amount as will represent the benefits received by the said lower lands or organized district. And if said commissioners are successful in such suit the court shall enter a judgment against the owner or owners of the lands or the commissioners of such other drainage district or districts as the case may be, and the amount of such judgment shall be collected by due process of law, and shall be a lien upon the lands or drainage district against which the judgment has been rendered until paid: *And provided, further,* That where such lands are within another organized district the commissioners of the district against whom, as commissioners, a judgment may be rendered for benefits accruing to lands within the lower district, shall proceed to classify the lands within such district and shall raise by special assessment the amount of such judgment, which shall be levied upon the lands of said district, and when collected be turned over to the treasurer of the upper district. [As amended by Act approved May 10, 1901. In force July 1, 1901. Laws 1901, p. 150.]

46. Rights of land owners—Enlargement of boundaries of district—Proceedings.] § 42. Nothing in this Act shall be construed to forbid land owners within the district to more completely drain their lands by using the common drains as outlets to lateral drains; and the owners of land outside the drainage districts or another drainage district may connect with the ditches of the district already made, by the payment of such amount as they would have been assessed if originally included in the district; or if such connection shall, by increase of water, require an enlargement of the district ditches, then the outside owners of land so connecting, or other drainage district, as may be, shall pay the costs of such enlargement. If individual land owners outside the district shall so connect, they shall be deemed to have voluntarily applied to be included in the district, and their lands benefited by such drainage shall be treated, classified, and taxed like other lands within the district. Drainage commissioners may, at any time, enlarge the boundaries of their districts by attaching new areas of land, which are involved in the same system of drainage, and require for outlets the drains of the district made or proposed to be made, as the case may be, on petition of as great a proportion of the land owners of the area to be added as is required for an original district. All changes thus made in the district shall be duly noted and shown upon the map and recorded in the drainage record. The com-

missioners shall proceed to classify the lands thus added to the district, and such lands shall be classified and assessed or taxed with their fair proportion of the costs of the work done or to be done in like manner, and upon the same basis as it would have been made had the new area been included in the district at its organization. [As amended by Act approved June 3, 1889, In force July 1, 1889. Laws 1889, p. 118.

47. Sub-districts—Right of.] § 43. Sub-districts may be formed by owners of land in main districts for the purpose of local or more minute drainage, in the manner provided in this Act for the organization of main districts. Such sub-districts shall have the right to use the ditches of the main district for outlets or in drainage districts organized or proposed to be organized which have one or more lateral drains or proposed drains which are independent of each other, except as to the main drain or outlet, and which do now or will drain separate areas within said district, it shall be and may be lawful for the commissioners, at their option, to divide the district into as many sub-districts as there are separate areas, for the purpose of making assessments of benefits for the work to be done in said sub-district: *Provided*, The formation of sub-districts on either method as above provided shall not operate to release the lands in such sub-district from the payment of any assessment or levy made prior to such division, nor from any assessment or tax levy which may thereafter be made for the completion, maintenance or repair of the main work, or for the payment of the principal and interest on any indebtedness incurred by the main district, nor shall it give such sub-district any claim on the funds of the main district for its local use: *Provided, further*, That when sub-districts are organized under this Act, which have one or more lateral drains or proposed drains, which are independent of each other, except as to the main sub-district ditch or outlet, and which do now or will drain separate areas within said sub-district, it shall be the duty of the commissioners, as provided for in this Section, to divide such sub-districts into as many minor sub-districts as there are separate areas within such sub-districts to be drained, for the purpose of making assessments of benefits for the local or minute drainage to be done in such minor sub-districts. The commissioners in charge of or in control of sub-districts shall, on making such minor sub-districts, proceed to classify the lands therein and make assessments as in sub-districts and in main districts, and the funds arising therefrom shall be kept as a separate fund, to be used in such minor sub-district, from which it was collected in payment for the local or minute drainage within such minor sub-division: *And, pro-*

vided, further, That the formation of such minor sub-districts as herein provided for, shall not operate to release the lands in such minor sub-district from the payment of any assessment or levy made prior to such division, nor from any assessment or tax levy which thereafter may be made, for the completion, maintenance or repair of the main outlets or ditches in sub-districts or in main districts, or for the payment of the principal and interest of any indebtedness incurred by the sub-district or main district, nor shall it give such minor sub-district any claim upon the funds of the sub-district or the main district for its local use. Drainage districts, as organized under this Act, shall be known as the first, second or third class. Main districts shall belong to the first class. Sub-districts which have for their outlets the main district ditches or drains shall belong to the second class, and minor sub-districts, as provided for in this Act, which have their outlets into the main sub-district ditches or drains, shall belong to the third class. Sub-districts, or drainage districts, of the second class, which contain not less than five (5) sections of land shall upon the filing of a petition signed by a majority of the land-owners of said sub-district with the county clerk, in favor of the election of a board of commissioners for said sub-district, shall proceed at the next succeeding annual election of drainage commissioners, to elect such a drainage board. The notices of the election of such sub-district commissioners, the time of holding and making returns of the same, and the term of office, shall be the same as provided in this Act for the election of commissioners in original or main districts, and the compensation of such commissioners shall be the same as is provided for main districts commissioners. It shall be the duty of the main district commissioners to control all matters pertaining to main district drainage and such sub-districts of the second class as may be of too small area to be entitled to sub-district commissioners, and such sub-districts as may not file a petition for the election of sub-district commissioners. Sub-district commissioners, as provided for in this Act, shall have charge of and control over all matters pertaining to drainage within their respective sub-districts, or district of the second (2nd) class, and of drainage within their respective minor sub-districts, or districts of the third (3rd) class, as provided for in this Act, except such work as belongs exclusively to the main district and classification and assessments made, within such sub-districts and such minor sub-districts on account of the main work. [As amended by Act approved May 10, 1901. In force July 1, 1901. Laws 1901, p. 151.]

48. **Wilful injury to drain—Penalty—Damages.] § 44.** Any person who shall wrongfully and purposely fill up, cut, injure, destroy, or in any manner impair the usefulness of any drain, ditch, or other work constructed, established, or belonging to any drainage district for the purpose of drainage or protection against overflow, may be fined in any sum not exceeding two hundred dollars, to be recovered before a justice of the peace in the proper county. All complaints under this section shall be in the name of the People of the State of Illinois, and all fines, when collected, shall be paid over to the proper commissioners, to be used for the work so injured; and in addition to these penalties, the person so wrongfully or purposely filling, or in any manner impairing the usefulness of any such drain or drains, or other work, shall be liable to the commissioners having charge thereof for all damages occasioned to such work, and to the owners and occupants of land for all damages that may result to them by such wrongful act, which may be recovered before a justice of the peace, if within his jurisdiction, or before any court of competent jurisdiction.¹

49. **Damages to drain by animals—Liability of owner.] § 45.** Whenever an owner or occupant of land in a drainage district shall permit animals to pasture in an enclosed field through which runs an open ditch, which ditch is a part of a combined system of drainage, said owner or occupant shall repair such damage to the ditch as may be made by the animals, and if he neglects to do so, the commissioners shall make such repairs and require the said owner or occupant to pay the amount of the expense of such repairs to the treasurer of the district, and in case such owner or occupant shall neglect or refuse to pay such amount for ten days after such requirement is made in writing, then said commissioners shall proceed to collect the same by a suit in law in the name of such district before any court having jurisdiction.

(1) *Form of Complaint Against Person for Injuring Drain.*

State of Illinois,)
 County,) ss.

In the name of the People of the State of Illinois:

A. B. complains of C. D. that he, the said C. D., on the — day of —, A. D. 19—, wrongfully and purposely filled up [*or, as the case may be*], a certain drain [*or, as the case may be*], belonging to drainage district No. —, of the town of —, in the county aforesaid, constructed for the purpose of drainage [*or protection*] against overflow.

Subscribed and sworn to before me, this — day of —, A. D. 19—.

A. B.,
 L. M.,
 J. P.

50. Liability of commissioners for failure to perform duties —Penalty.] § 46. For a failure to perform any of the duties imposed upon them by the provisions of this Act, the commissioners so failing shall individually, upon complaint made under oath by any person who has paid a tax for the construction, maintenance or repair of such work, be liable to a fine not exceeding one hundred dollars (\$100), to be recovered in an action in the name of the People of the State of Illinois, for the use of the district interested, before any justice of the peace of the county, and all fines, when collected, shall be paid to the treasurer of the district, and be liable to the person injured by such neglect of duty, for all the damages resulting to the person complaining.

51.—Commissioners and treasurer to make annual report.] § 47. The drainage commissioners shall make annual reports of their acts and doings as such commissioners and file the same with the clerk of their respective districts on or before the first day of November of each year, which report shall contain a statement of the kind, character and amount of work performed in the district, the cost of the same, the amount of orders issued, the amount of orders outstanding and unpaid, and such facts as may be of general or special interest or benefit to the land owners in the district. It shall also be the duty of the treasurer to make annual reports and present the same to the commissioners on or before the 30th day of October of each year, which report shall contain a statement of all moneys received and from what source, and of all moneys paid out, on what account paid, and the date, number and amount of all orders paid, and such other facts as the commissioners may require, which report shall be by the commissioners filed with their report in the clerk's office, and thereupon the clerk shall record said report in the drainage record and shall also cause the same to be published in some newspaper or newspapers in the county or counties in which the district or any part thereof lies.¹

(1) *Form of Annual Report of Drainage Commissioners.*

State of Illinois, }
 ——— County, } Drainage District No. —.
 Town of ———, }

The drainage commissioners of district No. —, aforesaid, do make the following report of their acts and doings for the year ending on the — day of —, A. D. 19—.

First—The kind and character and amount of work performed in the district, is as follows: [*here set forth the same.*]

Second—The cost of the work aforesaid is \$—.

Third—The amount of orders issued is \$—.

52. **District—How dissolved—Assessments.]** § 47½. Whenever two-thirds of the owners of lands, owning not less than two thirds of all the lands within any drainage district organized under this Act, and lying wholly within the limits of a single township, shall present a petition in writing subscribed by them to the drainage commissioners of said district, asking that the organization of such district be dissolved, the said commissioners shall, after satisfying themselves that such petition is in due form and subscribed by the requisite number of land owners in such district and that all indebtedness of such district is paid, or funds provided for the payment thereof, and that there is no litigation pending against such district, indorse upon such petition an order dissolving such district; which petition with such indorsement shall forthwith be filed with the town clerk of the township in which such district is situated, and by him recorded in the drainage record of such township, and thereupon such organization shall be dissolved; but such dissolution shall not

Fourth—The amount of orders outstanding and unpaid is \$——.
Fifth—[*State such facts as may be of general and special interest or benefit to land owners in the district.*]
Witness our hands this —— day of ——, A. D. 19—.
Attest:
G. H., Clerk.

C. D., }
E. F., } Drainage
G. H., } Commissioners.

Form of Drainage District Treasurer's Annual Report.
State of Illinois, }
—— County, } Drainage District No. —.
Town of ——, }
To the drainage commissioners of district No. —, of the town aforesaid:
The following is the annual report of the treasurer of said drainage district, ending on the —— day of ——, A. D. 19—, containing a statement of all moneys paid out and on what account paid; the number and amount of all orders paid, with such other facts as the commissioners have required.
1st. Statement of all moneys received and from what source.

DATE.	MONEY RECEIVED.	FROM WHAT SOURCE RECEIVED.

2nd. Statement of all moneys paid out.

DATE.	ON WHAT ACCOUNT PAID.	NO. OF ORDER.	AMOUNT.

Witness my hand this —— day of ——, A. D. 19—.
G. H., Drainage District Treasurer.

prevent said commissioners from proceeding as before to collect any unpaid assessments, or other obligations owing to such district, or expending for the use of said district any funds belonging to the same, and shall not impair or prevent the collection of any obligation of said district. *And, provided,* That if at any time, not less than one year after the dissolution of the organization of any district as herein provided, a like number of land owners within such district shall, by petition subscribed by them, ask the said commissioners to restore the organization of such district as it was before such dissolution, the commissioners shall, after satisfying themselves that such petition is in due form and subscribed by the requisite number of land owners within such district, indorse upon such petition an order restoring such organization, which shall be recorded and forthwith filed with the town clerk, and recorded by him in the drainage record, and thereafter the organization of such district shall be in all respects the same as if it had not been dissolved: *Provided,* that nothing herein contained shall be construed to permit any person to obstruct, or in anywise prevent the use or proper working of any ditch or drain established in any such district, or the enforcement of the penalties for injuring drains. [Added by Act approved June 3, 1889. In force July 1, 1889. Laws 1889, p. 121.]

UNION DISTRICTS.

53. Petition, where filed—Powers of clerk and commissioners.

53. Petition, where filed—Powers of Clerk and Commissioners.] § 48. When the lands proposed to be organized into a drainage district lie in two towns in the same or in different counties, both under township organization, such district shall be designated as — Union District No. —, of the towns of —, county of —, State of Illinois. The petition shall be filed with the clerk of the town in which the greater part of the district lies, and such clerk shall select three commissioners for said district from the commissioners of highways of the two towns, taking a part from each town, to constitute the drainage commissioners for the union district, and the clerk shall notify each of them of their selection and of the time when they shall meet at his office as provided in section twelve (12) of this Act, or to meet as provided in section sixteen as the case may be. The clerk and commissioners shall have like powers and duties as provided for such officers in districts wholly in one town:

*Provided, however, if such district lies partly in two counties, the delinquent tax shall be made separately for such parts as lie in each, and be returned to the collector of the proper county.*¹

SPECIAL DRAINAGE DISTRICTS.

54. Special districts—How formed.
55. Notice of hearing petition.
56. Hearing petition—Finding—Affidavits—Witnesses.
57. Proceedings on hearing—Appointment of commissioners—Report—Order.
58. When special district organized—Notice of election.
59. Election—How conducted—Voter—Oath of commissioners.
60. District of less than fifteen owners—Appointment of commissioners.
61. Commissioners to view lands—Survey and estimates.
62. Procure right of way—When jury assess damages—Venire—Notice to owners.
63. Trial—Challenge—Verdict—Amendments.
64. Special assesment of benefits.
65. Maps to be filed—Classification of lands—Notice—Objections.
66. Appeal to court of record.
67. Certificate of fund required.
68. Additional assessment—May borrow money.
69. May extend indebtedness.
70. Petition for extension of time of payment.
71. Bonds to be recorded in a book—Payment to be entered.
72. Bond to be registered by State Auditor.
73. Certificate of auditor to county clerk—Clerk make tax list.
74. State to be custodian of tax—Collect and apply fund.
75. Commissioners file statement of notes and bonds—Application of tax—Levy to meet payment of interest.
76. County treasurer to be collector and treasurer—Bond.
77. Assessments—Lien upon land—Foreclosure—Additional remedy.
78. Compensation of officers—Fees how paid.
79. Construction of bridge over drain.

54. Special districts—How formed.] § 49. When the proposed district lies in three or more towns in the same or different counties, or in a county not under township organization, or partly in a county under township organization, and partly in a county not under township organization, the petition as provided in section 11 shall be presented to the county court of that county in which the greater part of the lands of the district shall

(1) The form of petition for union districts may be substantially the same as that heretofore given for drainage districts lying wholly in one township. The form of petition and other forms for proceedings in such cases heretofore given, may be adopted in forming union districts, by varying the same to suit the occasion.

lie, and be accompanied by a bond signed by at least three responsible persons conditioned for the payment of all costs to the officers of the court or accruing to other parties by virtue of the proceedings in case such district be not established, the bond to be approved by the clerk or county judge. Such districts when formed shall be known as ——— special drainage district in ——— county (or counties) and State of Illinois.

55. Notice of hearing petition.] §50. It shall be the duty of the clerk of said court to give notice by posting in at least five public places in each township in which said proposed district or any part thereof shall lie, also by publishing for three successive weeks a like notice in some weekly newspaper in said county or counties, which said notice shall contain a copy of the petition, and state the day of the term of court when such petition and all parties interested will be heard. The petition may be heard on any day of a probate or common law term of court, not less than twenty days from the filing of said petition. The posting and first publication of said notices, shall be at least twenty days before the hearing of said petition, and it shall be the duty of the clerk of said court to mail, at least ten days before the time fixed for the hearing of said petition, a copy of such notice to each person owning lands in said district, whose name, or post-office address, or place of residence is given, and whose name does not appear signed to said petition; and the clerk shall, on or before the time fixed for such hearing, file the publisher's certificate of publication together with his certificate of the mailing of such notices, giving the name of each person to whom notice was sent, also of the posting of the notices in each township, if the same, or any part of said notices, are posted by him, and the affidavits of all persons posting such notices, or any of them, which certificates and affidavits shall be evidence of the facts therein stated.

*Form of Notice by Town Clerk Notifying Commissioner of his Selection
as Drainage Commissioner.*

To A. B., one of the commissioners of highways of the town of ———, county of ———, State of Illinois:

You are hereby notified that I have selected you to act as one of the drainage commissioners of a union district to be organized, comprising lands lying in both the town of ——— and town of ———, in the county aforesaid, that a petition was, on the ——— day of ———, A. D. 19—, filed in the office of the town clerk of the town of ———, in the county aforesaid, praying for the organization of such union district, and that you are required to meet at the office of the town clerk, aforesaid, on the ——— day of ———, A. D. 19—, at — o'clock, for the purpose of organizing said union district.

Given under my hand this ——— day of ———, A. D. 19—.

L. M., Town Clerk.

56. Hearing petition — Finding — Affidavits — Witnesses.]

§ 51. It shall be the duty of the said court, at the time set for such hearing, to examine said petition, and if the court shall find, upon examination, that it is signed and that notice has been given as required herein, the court shall so find. The affidavits of three (3) credible signers to such petition, that they are acquainted with the locality, and that they verily believe that such petition is signed as required, shall be taken as *prima facie* evidence of such facts, against all persons owning lands therein, and as conclusive evidence against all signers of such petition, of the facts therein stated, and that they admit the necessity of organization under the provisions of this Act, and for the assessment of benefits and damages hereunder. At such meetings, any other owner or owners of land within said district, shall be permitted to place his, her or their names on said petition, if they so desire. Any person owning land in said district, whose name is not on said petition, may, at said time and place, appear and controvert any material statements in said petition. And for the purpose of such hearing, and of publishing, posting and mailing of notices, the court shall have power to examine witnesses produced before it, and may continue the hearing from time to time, until all matters are heard and determined by the court.

57. Proceedings on hearing—Appointment of commissioners —Report—Order.]

§ 52. Should the court find against the petitioners, it shall enter an order to that effect, and the petition shall thereupon be dismissed at the cost of the petitioners; should the court find in favor of the petitioners, it shall enter an order to that effect, and it shall thereupon be the duty of the court to appoint three drainage commissioners for said district, who shall at once proceed to the examination of the lands in said proposed district; said commissioners shall go upon the lands included in said proposed district, and personally examine the same; they shall have power to employ a competent civil engineer, if, in their opinion, the services of an engineer be necessary, who shall make such surveys and estimates as said commissioners may direct, and shall, if required by said commissioners, make and return to them a map, or plat, of his surveys, and a full report of all estimates required of him. Said commissioners shall make out and file with the clerk of the court a full report of their acts and doings as such commissioners, together with all maps, plats, surveys and estimates made or caused to be made by them, or the engineer employed by them, and may put into said report any recommendation they may deem advisable, which report shall be signed by the commissioners, and filed as aforesaid, on or before

the time fixed by the court for the hearing to complete the organization of said district or such further time as the court may give for the filing of the same. It shall be the duty of the court at the time of the appointment of said commissioners to fix the time for the hearing of said commissioners' report as aforesaid, and to complete the organization of said district, and no further notice thereof shall be required, and said commissioners shall then appear before said court and file their report, with all maps, plats, surveys and estimates, if the same has not been previously filed in said court. The time fixed by the court for such hearing shall not be more than thirty days subsequent to the date of the appointment of said commissioners. At the time fixed for the said hearing, if the commissioners have not completed their estimates, or for other cause, have not their report completed, the court may continue the hearing to such further time as will enable the commissioners to complete their work and file their report and other papers as herein required. At the time fixed by the court for the hearing on the report of the commissioners, and to complete the organization of said district, or at the time to which such hearing was continued, any owner of lands in said proposed district may appear in person or by attorney, and persons under guardianship by their guardians, and the court shall appoint a guardian *ad litem*, as in other civil proceedings, and be heard upon any and all questions, matters and things touching said report, and the organization of said district, and the court shall hear the testimony of all witnesses then introduced; and if it shall appear to the court that the lands included in the proposed district will be benefited for agricultural and sanitary purposes, the court shall so find and enter an order declaring such district organized, unless the court shall find, from the evidence introduced on such hearing, that the cost of the proposed work will exceed the benefits to be derived therefrom. In which case the court shall so find, and enter an order to that effect, and dismiss the petition: *Provided, however*, if the owners of lands lying in said district, who own in the aggregate more than one-half of the land lying therein, still desire the formation of said district and such desire shall be evidenced by a failure to withdraw their signatures from the petition, the court shall enter an order declaring said district organized, and the clerk shall enter the same of record, and the district shall thereupon be deemed fully organized, and shall be known and designated as "The — special drainage district in the county (or counties) of — and State of Illinois." The commissioners shall be the corporate authorities thereof, and shall be a body politic and corporate, with like powers as herein conferred upon other drain-

age commissioners either by this Act or other laws of this State; may sue and be sued, plead and be impleaded in their corporate name and capacity, which shall be "The commissioners of the — special drainage district in the county (or counties) of —, and State of Illinois."

58. When special district organized—Notice of Election.]

§ 53. As soon as a special drainage district has been organized, containing fifteen (15) or more land owners, it shall be the duty of the county clerk of the county in which the proceedings are instituted, who shall be *ex-officio* clerk of the commissioners of said district, to give notice by posting written or printed notices in at least five public places in or near said district, that on a day and place therein named, and at an hour not later than two (2) o'clock p. m., and not less than ten (10) days from the date of notice, an election will be held, for the purpose of electing three (3) drainage commissioners for said district.

59. Election—How conducted—Voter—Oath of commissioners.] § 54. In all elections held for the election of drainage commissioners, the drainage commissioners then in office shall be the judges of election, and in the absence or refusal of any of them to act, the voters present may choose a person or persons to fill the vacancy or vacancies. The judges shall choose one of their number to act as clerk. Every adult owner of land in the said district, whether residing within or without said district, shall be a voter, and if a resident of the county in which such district, or any part thereof lies, eligible to the office of drainage commissioner. The election shall close at four o'clock P. M., unless the judges of election shall determine to hold the polls open longer, but not later than six (6) o'clock P. M., to accommodate the voters. At the close of the election, the judges of election shall canvass the votes, and the three persons, or so many as there are vacancies to be filled, having the highest number of votes, shall be declared elected. In case of a tie, the judges, shall determine, by lot, who is elected, and they shall also determine, by lot, at the first election, their respective terms of office, one of whom shall serve for one year, one for two years and one for three years, or such parts thereof as may expire upon the election of their successors, respectively, at the annual meeting, which shall be held each year on the third Tuesday of November, when there shall be elected one drainage commissioner, to hold his office for three years, and until his successor is chosen and qualified. In case of a vacancy in the office, from resignation, death, removal or refusal to serve, the commissioners in office shall fill the vacancy by appointment, until such vacancy shall be

filled at an annual election. Within five (5) days after every election of drainage commissioners, the judges of election shall cause the poll book to be delivered to the county clerk aforesaid, with a certificate therein showing the names of those elected drainage commissioner, and the terms of each, which poll book shall be filed by the clerk, and be evidence of such election; each commissioner shall, within ten (10) days after his election or appointment, take an oath to faithfully discharge the duties of his office as such commissioner, which oath shall be signed by him and filed in the office of said clerk.

60. District of less than fifteen owners—Appointment of Commissioners.] § 55. In all special drainage districts containing less than fifteen (15) land owners, the court, on the organization of the district, shall appoint three drainage commissioners, who shall not be interested in the lands or work to be accomplished, nor of kin to any of the parties interested therein, one of whom shall hold his office for one year, one for two years, and one for three years, or such parts thereof as may expire upon the appointment of his successor; the term of each to be determined by the court by lot, at the time of such appointment; and annually thereafter, on the first day of the December term of the county court, the court shall appoint one commissioner for such district, who shall hold his office for three years and until his successor is appointed and qualified, and the court shall fill by appointment all vacancies in the office of commissioner from any cause.

61. Commissioners to view lands—Survey and Estimates.] § 56. The commissioners, as soon as they are elected or appointed and qualified, shall go upon the land included in said drainage district and determine upon a system of drainage, which shall provide main outlets of ample capacity for the waters of the district, having in view the future contingencies, as well as the present. A competent engineer shall be employed to locate and advise upon the character of the work to be done, and report in writing, with maps, profiles and estimates of cost, and in a general way, the benefits to accrue to the lands in the several localities of the district. They shall make, or cause to be made, a map or plat of the district and of the work to be done therein, which map shall show with reasonable certainty, the location of the proposed work, and they shall give a name or number to each ditch or drain. The maps and papers showing the final determination, as to the system of drainage, shall be filed in the clerk's office and be recorded in the drainage record.

62. **Procure right of way—When jury assess damages—Venire—Notice to owners.]** § 57. The commissioners shall then proceed to procure the right of way where they can do so by agreement, as provided in section 18 of this Act, which releases shall be filed and recorded in the drainage record. Should the commissioners be unable to procure the right of way by agreement with the owner or owners of any land on which the work may be located, they shall file a petition or statement, in writing, with the clerk of the court in which the proceedings are had, requesting the court to issue a venire for a jury to assess damages for right of way, and which petition or statement shall contain a general description of the lands or premises over or through which the right of way is sought, and the name of the owner or owners thereof, if known, the general course and direction of the right of way sought, and the amount of land proposed to be occupied by the same. On such petition or statement being filed, the court shall fix the time for the hearing not less than fifteen days from the date the same is filed, and the clerk shall issue a venire for a jury of twelve disinterested land-owners to appear at the time fixed by the court, which venire shall be delivered to the sheriff to execute the same as venires from courts of record. It shall also be the duty of the clerk to issue a notice or notices to be served upon the owner or owners of the lands over which the right of way is thus sought, informing him or them of the time and place when said case or cases will be tried, which notice may be substantially in the following form:

“To ——— You are hereby notified that a jury has been called to meet before the county judge of the ——— county of ——— State of Illinois, at the court house in said county, on the ——— day of ———, A. D. 19—, at — o’clock —M., for the purpose of assessing damages in the matter of the ——— special drainage district in the county (or counties) of ——— and State of Illinois, when and where you can appear and assert your rights, if you desire.

Which notice shall be signed by the clerk, and attested by his seal of office, and may be served by any constable, sheriff or other person, by reading the same to the person to whom it is addressed, or by delivering a copy thereof to such person, or by leaving such copy at his usual place of abode, with some person of the family of the age of ten years or upwards, and informing such person of the contents thereof. The services of said notices shall be made at least five days before said hearing. If the service be made by an officer, the return shall be made as in other cases, but if made by any person not an officer, the return shall be made under oath, stating when and in what manner served,

and for all services there shall be allowed the same fees as for services of process in civil cases: *Provided*, that if any of the owner or owners are non-residents or unknown, notice of such proceeding shall be given by publication, in some newspaper published in said county two successive weeks prior to the time of such hearing, which notice shall be substantially in the form as above given. Minors and their guardians shall be notified the same as other owners.

63. Trial — Challenge — Verdict — Amendments.] § 58. When the jury shall appear, the trial shall be conducted as other cases before said court; either party may have the same number of challenges, and for the same causes, as in other civil cases before said court. And if notice shall not have been given as herein provided, or for any other good cause, the court may continue the case from time to time, until proper notice has been given, or the case is ready for trial. The jury shall hear the evidence offered as to the value of the land proposed to be taken, and all damages consequent upon the construction of the proposed work, and may go upon the premises at the request of either party, for the purpose of viewing them, and they shall return, as their verdict, the amount found, if any, in favor of the owner or owners, and against said district, and the court shall enter judgment upon the verdict, unless, for good cause shown, the court grants a new trial, in which case, a time for such new hearing shall be fixed by court, and a new jury shall be empaneled; the judgment shall be final and conclusive. Vacancies in the panel of jurors, from whatever cause, shall be filled the same as other vacancies in other cases, but such vacancies shall be filled by land-owners. The owners of different tracts of land, whether they be joint or several owners, may be joined in the same petition or statement, and the jury shall hear and determine all cases for which the venire was issued, except when some one or more of the same have been settled, or the proceedings in reference thereto, are determined. They shall return in their verdicts the amount allowed, if any, to each owner or joint owner, and in case they are unable to agree as to any one or more of the cases submitted to them, the court shall receive their verdict in the case or cases in which they do agree, upon which judgment shall be rendered as hereinbefore provided, and a new jury shall be called to hear and determine the case or cases in which the former jury failed to agree, and the court shall fix the time for such hearing by an order entered of record, which shall be conducted and tried as new trials in other cases, but may be heard at the same, or a subsequent term of the court. The court shall allow amendments to the petition,

or other papers or records in the proceedings, at any time before rendering judgment.

64. **Special assessment of benefits.]** § 59. At the earliest practicable day the commissioners shall proceed to make a special assessment of benefits, as provided in sections 21 and 22 of this act, so that each tract benefited shall bear its proportionate share of the entire costs and expenses of such work and proceedings.

65. **Maps to be filed—Classification of lands—Notice—Objections.]** § 60. They shall without delay make out and file in the office of the clerk of said court the table or map, either or both, showing the classification of the lands and premises in said district, the names of the owners thereof, if known, and when unknown stating “unknown,” and they may attach to the same a statement of damages allowed, together with any statement or explanation they may think proper or necessary to a full understanding thereof by all persons. Said commissioners shall fix the time, not less than fifteen (15) days from the filing thereof, when they will meet to hear any and all objections that may be made to their classification, which meeting shall be at the court house of the county in which the district was organized, unless the commissioners shall, for the convenience of persons interested, designate some other place; and it shall thereupon be the duty of said clerk to issue notice or notices of the time and place of such meeting, which notice or notices may be in substance as follows:

“To whom it may concern: You are hereby notified that the commissioners of the —— special drainage district, in the county [*or counties, as the case may be*] of —— and State of Illinois, have filed their classification of lands benefited in said district, and that they will, on the —— day of ——, A. D. 19—, at the hour of — o’clock —M., meet at ——, to hear any and all objections that may be made to the same, when and where you can appear and be heard if you see fit.

“Dated at —— county of ——, State of Illinois, this —— day of ——, A. D. 19—.”

Which notice shall be signed by said clerk, and shall be published in some newspaper or newspapers printed or published in the county or counties in which the district or any part thereof is located, for two successive weeks, the first publication to be at least fifteen (15) days prior to the time for such hearing. The commissioners or a majority of them shall meet at the time and place fixed for the hearing, and shall hear all objections that may be urged, by any person interested, to their classification. They may adjourn from day to day, or from time to time, as deemed

necessary, by public announcement, until all objections are heard. All persons shall take cognizance of all adjournments without further notice. After hearing all objections that may be offered to their classification the commissioners shall, if satisfied that any injustice has been done, correct the same in accordance with the rights and justice of the matter, which corrections or changes, if any, may be made on the table or map, and the commissioners shall thereupon confirm their classification; but if not so satisfied, they shall confirm their classifications as originally made and shall make an order to that effect. All orders made by the commissioners, either of correction or confirmation, shall be filed in said clerk's office within five days from the completion of the hearing, and any person appearing and urging objections who is not satisfied with the decision of the commissioners in confirming the classification of his lands, may appeal therefrom, within ten (10) days after the order of the commissioners is filed in said court aforesaid, by filing with the clerk of said court an appeal bond with good and sufficient security, to be approved by the clerk or judge thereof, payable to said drainage district, conditioned for the payment of such tax as may be levied upon the land in question and all costs occasioned by said appeal in case said order of said commissioners shall be affirmed.

66. Appeal to court of record.] § 61. When an appeal is taken under the preceding section, it shall be taken to the county and circuit courts of the county in which the land is situated, as provided in sections 24 and 25 of this Act, and the decision rendered by the special jury in the last court of appeals shall be conclusive. The classification shall be made in writing and be made a part of the court record, and shall also be entered on the drainage journal, and shall be the basis for the levy of assessments for the purpose of drainage in the class of districts to which such lands may belong. [As amended by Act approved May 10, 1901. In force July 1, 1901, Laws 1901, p. 152.]

67. Certificate of fund required.] § 62. As soon as the classification has been corrected and confirmed by the commissioners or court of appeal, as provided in the preceding section, it shall be competent for the commissioners to order such an amount of money to be raised by special assessment upon the lands of the districts which are benefited as may be necessary, according to the best judgment of the commissioners, which amount shall be certified and returned by the commissioners to the clerk of said court, who shall record the same in the drainage record. The certificate may be substantially as follows:

"We hereby certify that we require the sum of —— dollars, to be levied as a special assessment or tax, for drainage purpose, on the lands and property benefited in the —— special drainage district, in the county [*or counties*] of —— and State of Illinois.

"Given under our hand this —— day of ——, A. D. 19—."

"Commissioners."

Which certificate shall be signed by the commissioners in their corporate name. It shall thereupon be the duty of said clerk to compute and apportion the amount thus levied among the several tracts in the name of the owners, when known, according to the acreage of each, and its figure of classification on the graduated scale, so that each tract may bear its burden in proportion to benefits. The commissioners shall make out a tax list, which shall conform, as near as the facts will admit, to the list provided for in Section 26 of this Act, which list shall be signed by the commissioners and filed with [by] the clerk¹ among the records of the drainage district.

Provided, however, Where the lands of said district lie in two or more counties the clerk of the court in which the proceedings are had shall forthwith, after the filing thereof, send a copy of such list to the circuit court clerk or recorder, as the case may be, of the other county or counties in which lands assessed may lie, showing the land assessed in such county or counties, and it shall be the duty of such circuit court clerk or recorder to file such list in a record in his office and properly note or index the fact of such levy to each quarter section of land assessed. The fees for such certification, recording and indexing shall be the usual fees for like service and shall be taxed as costs in such proceeding, and when paid shall be distributed to the officers entitled to the same, as part of the fees of their respective offices. [As amended by Act approved May 10, 1901. In force July 1, 1901. Laws 1901, p. 152.]

68. Additional assessment—may borrow money.] § 63. If at any time the commissioners shall find that the amount of such assessment or tax levied will be inadequate to complete the proposed work, they shall make such additional levy or levies as may be necessary to complete the proposed work, which additional levy or levies shall be made on the original classification, as herein provided for the first assessment or tax levy and com-

(1) NOTE.—A separate act, purporting to amend this section by inserting after the words "filed by the clerk," the clause: "and any party against whose land a tax has been thus levied, may appeal therefrom to the county court in the same time and manner, and on the same grounds, as provided in section 27 of this act;" and this was also approved by the governor on the same day. But as this separate act fails to identify by its title the section that it purports to amend, it amends nothing.

puted and extended by the clerk in the same manner. Upon any levy being made as herein provided, it shall be competent for the commissioners to order the tax to be paid in installments of such amounts and at such times as will be convenient for the accomplishment of the proposed work; otherwise the whole amount of such tax shall be payable thirty (30) days after such confirmation, and shall be a lien upon the lands assessed until paid; and such taxes shall draw interest at the rate of six (6) per cent per annum from the time they shall become payable until they are paid, and such interest may be collected and enforced as part of the taxes: *Provided, however,* If in the judgment of the commissioners the payment of such tax, or any installment or installments thereof, for the speedy completion of the proposed work, would be too heavy a burden upon the owners and persons interested to pay in time to be used for said work, the commissioners may, at any time after the levy has been made, postpone the payment of such tax, or any one or more installment or installments, or any part thereof, to such time or times as they think proper and advisable, but not longer than fifteen (15) years from the time of the levy thereof. For the construction of the proposed work, or for the continuation and completion of the same, where it has been commenced, the commissioners may borrow money not exceeding in amount ninety (90) per cent of any assessment or levy unpaid at the time of borrowing, and may secure the payment of the same by notes or bonds of said district, bearing interest not to exceed six (6) per cent per annum. The interest may be made payable annually or semi-annually, which notes or bonds may be made due or payable at the same or different times, but shall not run beyond one year after the last assessment or levy on account of which the money is borrowed falls due, which notes or bonds shall not be held to make the commissioners personally liable for the money borrowed, but shall constitute a lien upon the assessment or assessments, levy or levies, on account of which they are issued, for the repayment of the principal and interest thereon. On the correction and confirmation of said assessment, or levy, it shall be the duty of the clerk of said court to record the same, together with all orders of the commissioners, in the drainage record, and he shall make a certified copy of such tax list, the order of the commissioners showing how or when the assessment or tax for benefits is payable, and deliver the same to the treasurer of said district, who shall proceed to collect the taxes or installments as they come due. [As amended by Act approved May 10, 1901. In force July 1, 1901. Laws 1901, p. 153.]

69. May extend indebtedness.] § 64. In any case or cases where the drainage commissioners of any special drainage district heretofore organized, or that may hereafter be organized, under the laws of this State, have, or may, for the purpose of constructing or completing the work to such district, issued notes or bonds on any assessment or assessments, installment or installments, the payment of which at maturity would, in the judgment of the commissioners, be an unreasonable burden on the owners of lands assessed, said commissioners shall have the right and power to fund such notes or bonds, as the case may be, or any part thereof, and issue new notes or bonds to the amount of the unpaid assessment or assessments, installment or installments, upon which such notes or bonds thus outstanding were issued, which new notes or bonds may bear interest not to exceed six (6) per cent per annum. Said commissioners may extend the time for the payment of any such assessment or assessments, installment or installments, as the case may be, by an order signed by them, and filed with the clerk thereof, to be by him recorded in the drainage record, and a certified copy thereof to be delivered by said clerk to the treasurer of said district, which order shall operate to suspend the time for collecting until the time fixed in said order of the assessment or assessments, installment or installments, named in said order. Such new notes or bonds shall not run to exceed one year beyond the time fixed for the payment of the assessment or assessments, installment or installments, upon which the same is, or are, issued. And the old notes or bonds shall be taken up and cancelled by said commissioners immediately upon issuing the new notes or bonds, on the same assessment or installment, or any part thereof. The payment of interest on all notes or bonds shall be provided for, collected and paid, as herein provided, for the payment of interest in other cases. [As amended by Act approved May 10, 1901. In force July 1, 1901. Laws 1901, p. 155.]

70. Petition for extension of time of payment.] § 65. Whenever a petition, signed by a majority in number of the adult owners of lands assessed for benefits in any special drainage district, hereto or hereafter organized under the laws of this State, and who own, in the aggregate, at least one-third ($\frac{1}{3}$) of such land, shall be presented to the drainage commissioners of such district, representing that any assessment or tax has been made against the lands assessed for benefits, for the purpose of constructing the work therein, and that the same has been confirmed and is unpaid in whole or in part, and that it would promote the interest of the land owners in such district, to extend

the time of the payment thereof, or any part of the same, stating what part, and the time or times to which they desire such extension made, but not to exceed ten (10) years from the time the assessment or levy was confirmed, and asking that such extension be made and that bonds of the district be issued, not exceeding in amount the amount of the assessments, levy, or part thereof, thus sought to be extended, it shall be the duty of the commissioners of such districts to enter an order extending the time of the payment thereof, as asked for in said petition, and thereupon it shall be competent for said commissioners to issue the bonds of said district to the amount thus extended, which bonds shall bear interest not to exceed six (6) per cent per annum, payable annually or semi-annually, and shall be a lien on the assessment, levy, or part thereof, thus expended, and shall not run longer than one (1) year beyond the time the same becomes due by such extension. The petition and order of the commissioners shall be filed and recorded in the drainage record, and shall operate to stay the collection of the assessment, levy or part thereof thus extended, to the time fixed by said commissioners, and shall be sufficient authority for the issuing of such bonds by the commissioners of such district. No bonds issued under the provisions of this Act shall be sold for less than the par value. [As amended by Act approved May 10, 1901. In force July 1, 1901. Laws 1901, p. 155.]

71. Bonds to be recorded in a book—payment to be entered.] § 66. Before issuing any bonds under the provisions of this Act the corporate authorities of any district desiring to issue bonds shall provide a well bound book, in which a record of all bonds issued, with their number, amount, rate of interest, date of issue, when due, where payable, amount received for the same and the assessment, tax levy, installment or part thereof on account of which the bonds are issued shall be made, and said book shall at all times be open to the inspection of all parties interested in said district, either as taxpayers or bond-holders, and on the payment of any bond an entry thereof shall be made in said book in a proper column for that purpose.

72. Bond to be registered by State Auditor.] § 67. On the presentation of any bond, issued under the provisions of this Act, at the office of the auditor of public accounts for registration, the said auditor shall cause the same to be registered in his office in a book to be kept for that purpose. Such registration shall show the date, amount, number, date of maturity, rate of interest, time when such interest is payable, and place of pay-

ment of the principal and interest of such bond; under what Act, and by what district issued, and the name of the person or persons presenting the same for registration; and for such registration the auditor shall be entitled to a fee of twenty-five cents. And the auditor shall, under the seal of his office, certify upon such bond the fact of such registration, for which the auditor shall be entitled to a fee of twenty-five cents, such fees to be paid by the person or persons desiring such registration and certificate; but no bonds issued under this Act shall be entitled to registration in the office of the State auditor until a sworn statement by the corporate authorities of the district issuing the bond shall have been filed with him, showing the date of the organization of the district, in what county organized, the time when the assessment levy or part thereof on account of which the bonds are issued will become due, and the date, number, amount, rate of interest and the date of maturity of the bonds, together with any other information in relation thereto, which may be demanded by the auditor of public accounts.

73. Certificate of auditor to county clerk—Clerk make tax list.] § 68. When any bonds issued under the provisions of this Act shall be so registered, the Auditor of Public Accounts shall annually ascertain the amount of interest or interest and principal due and accrued, or to accrue for the current year, on all such bonds so registered in his office, together with the ordinary cost to the State of the collection and disbursement of the same, to be estimated by the Auditor and State Treasurer, and shall make out and transmit to the county clerk of the county in which said district is organized, a certificate setting forth such estimated amount of such particular district for such purposes, to be filed in his office and recorded in the drainage record, and the amount thereof shall thereupon be deemed added to and a part of the amount which may be levied or provided by law within the limits of said district for the purposes of State revenue; and thereupon it shall be the duty of the clerk of said district to compute and apportion the amount so certified among the several tracts and property assessed for benefits in such district, in the manner as original levies are computed under this Act, and thereupon he shall make out a tax list of the lands and property in the district, and extend opposite each tract and property its *pro rata* share of the amount so certified by the Auditor, and deliver the same to the treasurer of the district. Where the district lies in more than one county, the clerk shall make out a separate tax list of the lands and property assessed for benefits in each county, showing the *pro rata* share levied against the same separately, and

deliver the same to the county clerk of the respective counties, and the clerk or clerks of the respective counties at the time of making up the tax books and extending State taxes shall extend on the tax books, for collection, the *pro rata* share thus levied, and the same shall be collected with the State taxes, and all laws of this State relating to the State revenue shall apply thereto.

74. State to be custodian of tax—Collect and apply fund.] § 69. The State shall be deemed the custodian, only, of the tax so collected, and shall not be deemed in any manner liable on account of such bonds, but the tax and funds so collected shall be deemed pledged and appropriated to the payment of the principal and interest of the registered bonds to satisfy which the same is hereinbefore provided to be collected as aforesaid, and such bonds issued under the authority thereof shall be deemed secured and provided for in virtue thereof until fully satisfied. The State shall annually collect and apply the said fund to the satisfaction of the interest, or interest and principal, as the case may be, of such registered bonds of any such district, and the interest coupons or bonds so paid shall be canceled by the State Treasurer and returned to the corporate authorities of the district which issued them.

75. Commissioners file statement of notes and bonds—Application of tax—Levy to meet payment of interest.] § 70. It shall be the duty of the commissioners of every special drainage district heretofore organized under any law of this State, as also the commissioners of every such district hereafter organized, to file on or before the first day of December of each year, with the county clerk of the county in which the district was or may be organized, a statement of the date, number and amount of all notes or bonds issued by them as such commissioners, and which remain unpaid, the time the same will mature, the rate of interest such notes or bonds bear, and the time the interest falls due, the amount necessary to be levied on the lands assessed for benefits in order to meet the payment of the interest for the ensuing year; also the amount, if any, necessary to be levied to keep the work, or any part thereof, in repair for the year next ensuing; also the amount of any deficiency in the payment of interest before accrued, or in the payment for repairs made; and the clerk shall compute the *pro rata* share which each tract or parcel of land or property in said district, assessed for benefits, will have to pay to raise said respective amounts, which *pro rata* share shall be in the same proportion as the assessment for the construction of said work, and it shall be the duty of the county clerk of the county in which the lands are located to ex-

tend the same on the collector's books, the same as State, county, municipal or other taxes are extended, in appropriate column or columns, and in case the lands or property assessed lie in more than one county, the county clerk of the county in which the district is organized, shall certify to the clerk, or clerks, of such other county or counties, a description of the lands or property assessed in such other county, and the amount to be extended against the same for interest, as also for repairs, either or both, and on receiving such certificate the clerk of the proper county shall extend the same on the proper collector's book, in proper columns, the same as though the whole proceedings and district were in his county. And the amounts so extended shall be collected at the same time and in the same manner as other taxes on like property, and shall be paid over by the party collecting, to the treasurer of the drainage district in the same time and manner as taxes collected are required to be paid to treasurers of municipal corporations. No levy or assessment made by the commissioners to meet the payment of interest on the notes or bonds of the district unpaid shall be used for any other purpose, but shall be faithfully applied to the payment of such interest as it becomes due: *Provided*, where the whole or any part of the bonds of the district are registered, and the Auditor of Public Accounts has levied, as hereinbefore provided, an amount sufficient to meet the payment of the interest on such registered bonds as it becomes due, then the commissioners shall make their levy so as to meet the payment of the interest on the bonds that are not registered.

76. County treasurer to be collector and treasurer—Bond.]

§ 71. The county treasurer of the county in which the proceedings for the organization of a special drainage district are commenced and district organized, shall be the collector and treasurer of such district. He shall give bond to the commissioners in such sum as they may fix, not less than double the amount likely to come into his hands in any one year, which bond shall be signed by two responsible securities, approved by the commissioners and filed and recorded in the office of the clerk. *Provided*, where the district lies in two or more counties, the commissioners may appoint the county treasurer of either county as treasurer for the district.

77. Assessments—Lien up on land—Foreclosure—Additional remedy.] § 72. Any and all assessments made under any law of this State heretofore in force for the organization of special drainage districts, as also all assessments or levies hereafter made

under the provisions of this Act, shall be taken, held and considered to be a lien upon each and every tract of land or property assessed in such district to the extent and amount of the proportionate share assessed or levied against the same, but such land, or owner thereof, shall not be liable for more than such proportionate share and the subsequent levy or levies for construction and for the payment of interest or repairs, which lien may be discharged on the payment of the amount thereof to the treasurer of said district at any times before notes or bonds of the district are issued on the assessment. In case the owner or owners of any lands lying in said district, and which are assessed, fails or neglects to pay any assessment or assessments, installment or installments, tax levy or levies, when due, and the same be not collected on or before the annual sale of lands for non-payment of taxes, the commissioners of such drainage district may file a petition in the circuit court of the county in which the land or property upon which such assessment, installment or levy has not been paid, for a foreclosure of such lien; and the commissioners may proceed in their corporate name and capacity to foreclose such lien as provided by law. They may also commence and maintain suits at law for the recovery of judgment against the person or party whose lands or property is assessed for benefits for any assessment or tax, or any part thereof, which remains due and unpaid on the lands and property of such person or party. Any judgment so recovered may be enforced and collected as other judgments in the same court. The remedy provided in this section for the collection of delinquent special assessments or taxes shall not be construed to abridge or in any manner interfere with the right and power to enforce collection of any delinquent assessment or tax in the manner provided by the revenue laws of this State, or other provisions of this Act, but the remedy herein provided shall be taken and held as an additional means to enforce payment of such delinquent assessment or tax.

78. **Compensation of officers—Fees how paid.]** § 73. The commissioners provided for in this Act shall receive two dollars and fifty cents per day for the time actually employed in the discharge of the duties of their office. They shall make out their account under oath, and in all districts except special drainage districts, their account shall be audited and allowed by the board of auditors of the town in which the district is organized; and in special drainage districts their account shall be presented to and allowed by the judge of the court in which the district is organized; and the amount allowed by the board of auditors, or court,

as the case may be, shall be paid out of the funds of the district for which the services were rendered. The clerk of the commissioners shall receive the same fees as is allowed for like services in other matters connected with his office. If a civil engineer shall be employed he shall receive not to exceed five (\$5) dollars per day for the time actually employed. The treasurer shall receive for his services such sum as may be fixed by the commissioners, not to exceed two per cent. of moneys collected by him, and not to exceed one per cent of moneys paid him by other collectors or treasurers, and in no case shall the treasurer receive to exceed five hundred dollars for his services in any one year from any one district. All fees and allowances shall be paid out of the funds of the district for which the services were or may be rendered.

79. Construction of bridge over drain.] § 74. There shall be constructed at least one bridge or proper passage way over each open drain where the same crosses any enclosed field or parcel of land, and the cost of construction thereof shall be charged as part of the cost of construction of such drain, and such bridge, or passage way, shall be maintained by the commissioners from the district funds: *Provided*, the commissioners may contract with owners of land crossed by such drain to maintain such bridges or crossing.

RIVER DISTRICTS.

80. Manner of organizing river districts—Powers.

80. Manner of organizing river districts—Powers.] § 75. River districts may be organized in the manner and with like powers provided in this Act for forming and conducting the business of drainage districts, and the commissioners as the corporate authorities shall have power to levy special assessments on the land and property benefited, for the purpose of straightening, enlarging, embanking or otherwise improving the channels of rivers or lesser streams for a more free flow of water and protection from overflow, including the clearing of driftwood from the stream and removing drift material from the bank when liable to become drift, and railroads and public roads which receive benefits may be included in the assessment for benefits; or the highway commissioners of towns interested therein may appropriate from the road fund, and the county board may appropriate from the county treasury in aid of or wholly to accomplish such work, in consideration of the benefit to roads, bridges and the

public health. The town or county authorities named may order surveys and reports with maps, plans and estimates of cost and benefits to accrue from the proposed improvement. When such works or any of them are a necessary part to the system of drainage of any organized drainage district, such works shall be deemed as belonging to drainage.

DISTRICTS BY USER.

81. Owners liable for their just proportion for repairs and improvements.

81. Owners liable for their just proportion for repairs and improvements.—When not made voluntary may be made under the provisions of this act.] § 76. Where two or more parties owning adjoining lands which require a system of combined drainage, have by voluntary action constructed ditches which form a continuous line, or line of branches, the several parties shall be liable for their just proportion for such repairs and improvements as may be needed therefor, the amount to be determined as near as may be on the same principle as if these ditches were in an organized district. Whenever such repairs and improvements are not made by voluntary agreement, any one or more owning parts of such ditch shall be competent to petition for the formation of a drainage district to include the lands interested in maintaining these ditches. The petitioner or petitioners for the formation of such district must show to the satisfaction of the court that his or their land is damaged through the lack of proper repairs or improvements to said ditch or drain. The form of procedure and the conditions heretofore prescribed in this Act shall be observed as near as practicable; but the ditches shall be taken as a dedication of the right of way, and their construction and joining as the consent of the several parties to be united in a drainage district. These ditches, if open, shall be made tile drains when practicable.¹ As amended by Act approved May 18, 1905. In force July 1, 1905. Laws 1905, p. 19.

DISTRICT BY MUTUAL AGREEMENT.

82. How such districts formed.

82. How such districts formed.] § 77. Owners of land which requires combined drainage may form drainage districts, by mutual agreement to include lands of their own only, by an

(1) Patton v. People, 229 Ill. 512.

instrument of writing duly signed and acknowledged, and recorded in the drainage record. This agreement may include the location and character of the work to be done; the adjustment of damages; the classification, amount of taxes to be levied; how the work shall be done, or so much of these or more as may be agreed upon, and to this extent shall be as valid as though formed in the mode hereinbefore provided, and the powers and duties of the commissioners thereafter, shall be the same as prescribed for other districts and they shall commence acting at the point reached by the aforesaid agreement: *Provided*, that this agreement may include the selection of three drainage commissioners from their own number, or from others, and their terms of office shall be until the third Tuesday of the following November, or for this term and for one year in addition, as may be agreed at the time of their appointment and at the annual meetings thereafter, a majority of the land owners may choose three commissioners to serve one year by signing a certificate to that effect, or a majority may, in writing, discontinue the voluntary district, and thereafter it shall be under such commissioners as is herein provided for other districts of this class. Such writings shall be recorded on the drainage record. The powers and duties of the commissioners of a district by mutual agreement and the mode and effect of special assessment shall be the same as provided for other districts.

REPEALING SECTION.

83. Repeals.

83. Repeals.] § 78. This Act is an amendatory revision and consolidation of the three following Acts which are hereby repealed.

1.—“An Act to provide for the organization of drainage districts and to provide for the construction, maintenance and repair of drains and ditches by special assessments on the property benefited thereby,” approved May 29, 1879, in force July 1, 1879.

2.—“An Act to amend § 3, 9, 12, 13, 16, 33, 34, 35, 51, 53, 54, 55, and 57, and to repeal § 69 of an Act entitled, “An Act for the organization of drainage districts and to provide for the construction, maintenance and repair of drains and ditches by special assessments on the property benefited thereby, approved May 29, 1879, in force July 1, 1879, and to add three new sections amendatory of last said Act to enable lands to be drained and protected from overflow, to be known as sections 69, 70 and 71.” Approved May 24, 1881, in force July 1, 1881.

3.—“An Act to permit owners of land to construct drains for agricultural purposes,” approved June 23, 1883, in force July 1, 1883.

The Acts and proceedings done, and rights acquired under either of the foregoing Acts if in substantial conformity to law shall not be held to be void from merely technical informality of proceedings where no substantial rights of persons or property are adversely affected; and the same principles shall apply to this Act. All drainage districts heretofore organized under any one or more of the Acts hereby repealed shall be held and they are hereby declared to be legally organized, and the assessments made therein shall be held to be legally made. This Act, as well as the Acts repealed, shall be liberally construed to promote drainage, and the reclaiming of wet and overflowed lands, and in the making and collection of assessments and taxes therefor. The officers, under the repealed Act, and proceedings begun, shall be continued under this Act and shall have and possess all the rights, powers and privileges the same and to the same extent as though the whole proceedings were commenced and carried on under the provisions of this Act, and only affected as to the future as herein provided. The following Acts are hereby also repealed; saving rights as in this section provided: “An Act to amend sections 1, 2, 3, and 5 of an Act entitled, An Act to provide for the construction and protection of drains, ditches, levees and other works,” approved April 24, 1871, approved April 15, 1875, in force July 1, 1875. “An Act to protect by levees lands subject to overflow and for draining wet or swamp lands and coal mines,” approved May 16, 1877, in force July 1, 1877. This Act and this repealing section shall not affect other independent laws for drainage and levees not herein mentioned, but shall be construed as an independent Act, not affecting other independent drainage laws except as it is a codification and amended successor to the first three Acts mentioned in the repealing section, and the special provisions of this Act for their own class of districts shall apply only to such districts, but the general provisions applicable to all districts shall apply to all districts provided for in this Act.

DRAINS CONSTRUCTED BY LICENSE.

AN ACT declaring legal drains heretofore or hereafter constructed by mutual license, consent or agreement, by adjacent or adjoining owners of land, and to limit the time within which such license or

agreement heretofore granted may be withdrawn. [Approved June 4, 1889. In force July 1, 1889. Laws 1889, p. 116.]

84. Drains constructed by license—Mutual benefit.

85. Permission to connect with drain.

86. Drains—Filling up—Consent.

87. Act, how construed—parol license.

84. Drains constructed by license—mutual benefit.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That whenever any ditch or drain, either open or covered, has been heretofore or shall be hereafter constructed by mutual license, consent or agreement of the owner or owners of adjoining or adjacent lands, either separately or jointly, so as to make a continuous line upon, over or across the lands of said several owners, or where the owner or owners of adjoining or adjacent land shall hereafter by mutual license, consent or agreement, be permitted to connect a drain with another already so constructed, or where the owner or owners of the lower lands has heretofore or shall hereafter connect a drain to a drain constructed by the owner or owners of the upper lands, then such drain shall be held to be a drain for the mutual benefit of all the lands so interested therein.

85. Permission to connect with drain.] § 2. It shall not be lawful for either of the parties interested in said drain to authorize any other person or persons to connect therewith without the consent of all the parties interested in said drain, and all drains connecting therewith without such permission shall be unlawful, and any person interested may, by bill in chancery, compel the person or persons constructing such unlawful drain to fill the same up, and in addition may have a right of action for all damages occasioned thereby.

86. Drains—filling up—consent.] § 3. Whenever drains have been or shall be constructed in accordance with this Act none of the parties interested therein shall, without the consent of all the parties, fill the same up or in any manner interfere with the same so as to obstruct the flow of water therein; and the license, consent or agreement of the parties herein mentioned, need not be in writing, but shall be as valid and binding if in parol as if in writing, and may be inferred from the acquiescence of the parties in the construction of such drain.

87. Act, how construed—Parol license.] § 4. This Act shall not be held to apply to any cause now pending in any court of this State, nor deprive any party of the right he may have under

existing laws to revoke any parol license heretofore granted to construct any such drain upon, across or over his lands: *Provided*, such right be exercised and suit commenced to enforce the same within one year from the time this Act takes effect, but if not thus exercised and suit brought within one year he shall be forever barred from thereafter revoking such license.

DISTRICTS MAY ISSUE BONDS.

AN ACT authorizing all drainage districts to issue bonds, and providing for the registration and payment thereof. [Approved and in force June 15, 1895. Laws 1895, p. 192.]

- 88. Commissioners may issue bonds.
- 89. When bonds may issue.
- 90. When bonds may be registered.
- 91. Duty of auditor—Amount which may be levied.
- 92. State shall be custodian of the tax.

88. Commissioners may issue bonds.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly.* That it shall be lawful for the commissioners of each and every drainage district heretofore or hereafter organized under any law of this State to issue the bonds of their respective districts, to any amount not exceeding ninety (90) per centum of the aggregate amount of any assessment theretofore levied upon the lands of said district, such bonds to bear interest at a rate not exceeding six (6) per centum per annum, payable annually, and of such form and tenor as said commissioners shall by resolution provide; but no bonds shall be issued under this section until the property owners representing a majority in amount of the lands lying in such district shall petition the commissioners for the issue thereof.

89. When bonds may issue.] § 2. Before issuing any bonds under the provisions of this Act the corporate authorities of any district desiring to issue bonds shall provide a well bound book in which a record of all bonds issued, with their number, amount, rate of interest, date of issue, when due, where payable, amount received for the same, and the assessment, tax levy, installment, or part thereof, on account of which the bonds are issued shall be made, and said book shall at all times be open to the inspection of all parties interested in said district, either as taxpayers or bondholders, and on the payment of any bond an entry thereof shall be made in said book in proper column for that purpose.

90. When bonds may be registered.] § 3. On the presentation of any bond issued under the provisions of this Act at the office of the Auditor of Public Accounts for registration, the said Auditor shall cause the same to be registered in his office in a book to be kept for that purpose. Such registration shall show the date, amount, number, date of maturity, rate of interest, time when such interest is payable, and place of payment of the principal and interest of such bond; under what Act and by what district issued, and the name of the person or persons presenting the same for registration, and for such registration the Auditor shall be entitled to a fee of twenty-five (25) cents. And the Auditor shall, under the seal of his office, certify upon such bond the fact of such registration, for which the Auditor shall be entitled to a fee of twenty-five (25) cents, such fees to be paid by the person or persons desiring such registration and certificate, but no bonds issued under this Act shall be entitled to registration in the office of the State Auditor until a sworn statement by the corporate authorities of the district issuing the bond shall have been filed with him, showing the date of the organization of the district, in what county organized, the time when the assessment levy or part thereof on account of which the bonds are issued will become due, and the date, number, amount, rate of interest and date of maturity of the bonds, together with any other information in relation thereto, which may be demanded by the Auditor of Public Accounts.

91. Duty of auditor—amount which may be levied.] § 4. When any bonds issued under the provisions of this Act shall be so registered, the Auditor of Public Accounts shall annually ascertain the amount of interest or interest and principal due and accrued, or to accrue for the current year on all such bonds so registered in his office, together with the ordinary cost to the State of the collection and disbursement of the same, to be estimated by the Auditor and State Treasurer, and shall make out and transmit to the county clerk of the county in which said district is organized, a certificate setting forth such estimated amount of such particular district for such purposes, to be filed in his office and recorded in the drainage record, and the amount thereof shall thereupon be deemed added to and a part of the amount which may be levied and provided by law within the limits of said district for the purposes of State revenue, and thereupon it shall be the duty of the clerk of said district to compute and apportion the amount so certified among the several tracts and property assessed for benefits in such district, in the manner as original levies are computed under this Act,

and thereupon he shall make out a tax list of the lands and property in the district, and extend opposite each tract and property its *pro rata* share of the amount so certified by the Auditor, and deliver the same to the treasurer of the district. Where the district lies in more than one county, the clerk shall make out a separate tax list of the lands and property assessed for benefits in each county showing the *pro rata* share levied against the same separately, and deliver the same to the county clerk of the respective counties, and the clerk or clerks of the respective counties at the time of making up the tax books and extending the State taxes shall extend on the tax books for collection the *pro rata* share thus levied, and the same shall be collected with the State taxes and all laws of this State relating to the State revenue shall apply thereto.

92. State shall be custodian of the tax.] § 5. The State shall be deemed the custodian only of the tax so collected, and shall not be deemed in any manner liable on account of such bonds, but the tax and funds so collected shall be deemed pledged and appropriated to the payment of the principal and interest of the registered bonds, to satisfy which the same is hereinbefore provided to be collected as aforesaid, and such bonds issued under the authority hereof shall be deemed secured and provided for in virtue thereof until fully satisfied. The State shall annually collect and apply the said fund to the satisfaction of the interest or interest and principal, as the case may be, of such registered bonds of any such district, and the interest coupons or bonds so paid shall be canceled by the State Treasurer and returned to the corporate authorities of the district which issued them.

Whereas, Many drainage districts desire to avail themselves of the benefit of this Act, therefore, an emergency exists, and that therefore this Act shall be in force from and after its passage.

ABATEMENT OF ASSESSMENTS.

AN ACT in relation to the abatement of assessments for benefits in levee and drainage districts. [Approved June 15, 1895. In force July 1, 1895. Laws 1895, p. 161.]

93. Abating amount of assessments.

94. What petition shall state—Notice—Who may appear.

93. Abating amount of assessments.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That the county courts of this State in any county or

counties wherein any such levee or drainage district exists, shall have power upon petition of the commissioners of such district or districts, or of any land owner of lands located therein, to inquire and ascertain whether any assessment or assessments for benefits in such district exceed the total amount of all indebtedness of such district based upon such assessment or assessments respectively. And in the event that such court shall find from the evidence that such assessment or assessments is or are in excess of such total amount of outstanding indebtedness based thereon, such court shall have power to abate the amount of such assessment or assessments so in excess of all such indebtedness.

Provided, however, That no such abatement of assessments shall be made whereby any contract of such drainage district for the payment of indebtedness based upon such assessments shall be impaired.

94. What petition shall state—Notice—Who may appear.]

§ 2. Such petition for abatement of assessment shall state the total amount of balance of assessment wherefrom abatement is sought, and the total amount balance of indebtedness based on such assessment and the balance of excess of assessment above such balance of indebtedness, and the truth of the facts averred in the petition shall be verified by affidavit. Such petition shall be filed at least forty days prior to the first day of the term of court at which the same is sought to be tried and heard, and no hearing, order or decree shall be had or taken thereon until publication of notice of the tendency of such petition addressed to whom it may concern, stating the object of such petition and the subject matter thereof, as herein required to be set forth, shall have been published in some public newspaper published in the county wherein the matter of such petition is pending, at least once in each week and for four successive weeks, the first publication thereof being not less than forty days prior to the first day of the term of court at which such hearing shall take place. Any creditor of said district the owner of any evidence of indebtedness based upon such assessment so sought to be abated, or any person interested shall have the right to appear at the hearing of said petition, and show cause, if any, why the abatement or any part thereof petitioned for should not be made.

COUNTY DITCHES AND DRAINS.

AN ACT to maintain and improve county ditches heretofore constructed to drain certain swamp and overflowed lands. [Approved June 23, 1883. In force July 1, 1883. Laws 1883, p. 80.]

- 95. Public ditches or drains.
- 96. Power of county board—Commissioners.
- 97. Commissioners—Separate districts.
- 98. Classification of districts for taxation.
- 99. Classification—Notice—Review.
- 100. Meeting to hear objections.
- 101. Finding of commissioners.
- 102. Appeal from decisions.
- 103. Manner of appeal.
- 104. Power of board of appeal.
- 105. Map—Record—Report.
- 106. Drainage—Commissioner—Appointment.
- 107. Corporate authority of district—Rate of Tax.
- 108. Tax—How Computed—Separate fund.
- 109. Contract with other counties.
- 110. Purpose of Act.

95. Public ditches or drains.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That the ditches or drains heretofore made by any county, or by any county contracting with an incorporated company, to drain the swamp and over-flowed lands donated to such county by the State, are hereby declared public ditches or drains, and may be preserved and improved by the several county boards in the counties where these ditches lie, in the manner as provided in this Act.

96. Power of county board—Commissioners.] § 2. The county board may designate what ditch or ditches shall be repaired or improved to secure the purposes for which it was constructed; and when any one or more have been so designated, the board shall appoint three suitable persons to be styled district commissioners, neither of whom shall have any personal interest in the proposed work, and within ten days after being notified of their appointment, they shall meet at the office of the county clerk, file their acceptance and take the oath required of officers by the constitution.

97. Commissioners—Separate districts.] § 3. They shall proceed, soon as practicable, to form drainage districts, to include in each, all such tracts, divisions and subdivisions of land,

being near or more remote from the line of the drain, but which, for a thorough system of drainage, will be benefited in the way of securing an outlet by the preservation and improvement of the ditch or ditches which drain its surplus waters. Separate districts shall be formed where the ditches discharge independently; also on branches of the same water system, where the maintenance and improvement of its ditches are clearly independent of others; and separate districts may be formed on the upper level of a water system where its outlet will secure drainage independent of the ditches on the lower level.

98. Classification of districts for taxation.] § 4. When the commissioners have laid out a district, they shall give it a name, subject to alteration by the county board, and proceed to classify the lands within the districts on a graduated scale according to the supposed benefits it will receive. The tracts adjudged to receive most and about equal benefits, shall each be marked one hundred (100) on the scale of benefits; and such as will be less benefited shall be marked some number less than one hundred, denoting its per cent. of benefits. This classification, when made and established, shall remain as a basis for taxation, so that each tract shall bear its just burdens in raising funds for maintaining and improving the ditches within such district.

99. Classification—Notice—Review.] § 5. When this classification is completed, they shall publish for three weeks in some one or more newspapers in their county, a notice showing what tracts of land are included in the district, how classified on the scale of benefits, with owner's name if known; and they shall also post up at least ten notices containing the same items, in or contiguous to the district, and these publications and notices shall state when and where the commissioners will meet to review their doings, and hear such objections as may be made by any aggrieved party.

100. Meeting to hear objections.] § 6. At this meeting which may be adjourned if necessary, any person, his agent or attorney, owning lands within the district, may object and show cause:

1. That the district should not be formed on the ground of impracticability of drainage or that the cost will be greater than the benefits.

2. To the boundaries of the district as including or excluding certain tracts of lands improperly.

3. To the classification of lands on the scale of benefits, specifying such as are too high or too low.

101. Finding of commissioners.] § 7. If the commissioners find either count in the first paragraph established, they shall annul the district and so report to the county board, and all further proceedings shall end: *Provided*, the county board may, in their discretion, appoint other commissioners at some subsequent time. But if they find for the district, they shall consider the objections under the other heads of boundaries and classifications of lands; and they shall make such changes as shall seem to them just. They shall publicly announce their decision, and file their statement of the same within three days, with the county clerk.

102. Appeal from decisions.] § 8. Any one person or persons owning lands within the district as established, may, within five days after the commissioners have reported to the county clerk, appeal from the decision of the commissioners, on any point objected to at the time of review, by giving a bond, with security, to be approved by the county clerk, conditioned to pay all costs of the proceedings under the appeal, if the decision of the commissioners be in all things sustained. If more than one person appeals, they shall all join in the same appeal, though their objections may be on different matters.

103. Manner of appeal.] § 9. The appeal shall be addressed to the county clerk, stating the cause of the appeal. In counties under the township organization, the county clerk shall summon three supervisors, who shall not be owners of land in the proposed district, nor otherwise interested, to try the appeal. In counties not under township organization, the appeal board shall consist of the county judge, assessor and county clerk, who shall be duly notified by the county clerk; and he shall give at least three days' notice to one or more of the appellants when and where the appeal will be heard. If any of the last named board are excluded by reason of interest, it shall pass successively to the sheriff and coroner.

104. Power of board of appeal.] § 10. The board of appeal shall have the same power and jurisdiction as the commissioners on the questions involved in the appeal. They may annul the district, change the boundaries, or alter the numbers placed on the scale of benefits, if these or any of them were the subjects named in the appeal. They shall hear proofs and allegations, may themselves go upon the ground and investigate, and when they shall have concluded, they shall file their decision with the clerk of the county. If it be to annul the district, no further proceedings shall be had, except it shall be again instituted by the county board. If the district be not annulled, and the pro-

ceedings of the commissioners be reversed or approved, wholly or in part, they shall so report to the county clerk, and their decision on the matters submitted, shall be final and conclusive.

105. Map—Record—Report.] § 11. After the district shall have been fully established, by reason of no appeal from the decision of the commissioners, or by the action of the board of appeal, the commissioner shall cause to be made a map of the district, showing each tract of land included, with the figures showing the classification on the scale of benefits, and the owner's name, if known, marked on each tract. A copy of this map shall be filed in the office of the county clerk, and in the office of each town clerk, whose town is wholly or in part included in the drainage district. They shall also cause to be recorded in the recorder's office, an instrument of writing, setting forth all the material facts of the case, including a description of the tracts of land composing the district, the number on the scale of benefits, and the owners' names so far as known, belonging to each tract. The commissioners shall also make a full and detailed report of the case to the county board, who shall spread the same upon their records.

106. Drainage—Commissioner—Appointment.] § 12. Whenever one or more drainage districts have been established, as herein provided, the county board shall appoint some suitable person drainage commissioner, who shall have such charge, perform such duties and execute such lawful orders, as the board may from time to time devolve upon him; and he shall hold his office two years, unless sooner removed by the board, in which case the board shall appoint his successor.

107. Corporate authority of district—Rate of tax.] § 13. The county board shall be the corporate authority of the several drainage districts of their respective counties organized under this Act, and may, in its discretion, levy special assessments to procure funds for the use of such districts, but no levy for any one year shall exceed a sum which will produce a tax of more than one dollar on each acre of the several tracts marked one hundred on the scale of benefits, and such other proportional amount less than one dollar an acre on the several tracts as graduated on that scale.

108. Tax—How computed—Separate fund.] § 14. The tax shall be computed for each tract according to its acreage and classification on the scale of benefits, and the tax shall be set down in a separate column on the tax books against each tract

composing a part of the district to be taxed, and the money shall be collected by the collector of taxes in like manner of other taxes, and, if not paid, it shall be treated as other delinquent taxes, and remain a lien upon the land until paid. The money when collected, shall be paid into the county treasury and kept as a separate fund for the use of its proper district, to be drawn upon by order of the county board.

109. Contract with other counties.] § 15. The county board, by itself or through such agencies as it may institute, may contract with other counties, or with the corporate authorities of other drainage districts, organized under this Act, or under other laws of this State, to connect ditches, or act otherwise, in concert or jointly, where a combined system of drainage shall be found to be necessary or expedient.

110. Purpose of Act.] § 16. The purpose of this Act, is to secure ample and permanent main channels of drainage for their respective districts, so that all owners of land within the district shall have the facilities of thorough drainage of their lands, and therefore each shall have free connection with the public ditches for that purpose, and, by consent of parties, drain over the land of others to reach the outlet; and where more perfect drainage is desired than is provided for by this Act, owners of land in any part of a district may organize under other drainage laws as freely and completely as though not included in a county district, and such district or sub-district, shall have free use of the public or county ditches for outlets to their drains.

DISSOLUTION OF DRAINAGE DISTRICTS.

AN ACT to provide for the dissolution of drainage districts. [Approved June 4, 1889. In force July 1, 1889. Laws 1889, p. 117.]

111. District—How dissolved.

112. Sale of property of dissolved district.

111. District—How dissolved.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That any drainage district may be dissolved by the order of the County Court of the county wherein the same is organized upon a hearing had upon a verified petition praying such dissolution, signed by not less than four-fifths of the adult land owners of such district, who own in the aggregate not less than three-fourths in area of the assessed land thereof, when it shall be determined by the court that not less than six weeks' notice of such

hearing has been given by posting notices in six of the most public places of the district sought to be dissolved, and by the insertion in a weekly newspaper of such county for six successive weeks next prior to such hearing, and that no indebtedness of such district exists and the costs of dissolution have been advanced: *Provided*, the waterways and other improvements of dissolved districts shall be and remain for the common use of and improvements by the land owners of said district so dissolved.¹

112. Sale of property of dissolved district.] § 2. If such dissolved district owns any property, either real or personal, it shall be sold by an order of the County Court directed to the Master in Chancery of said county, whose duty it shall be to advertise and sell such property in manner otherwise provided by law; and the proceeds of such sale, after the costs are paid, shall be turned over to the county treasurer, who shall use the same to pay any indebtedness of such dissolved district.

PROTECTION, MAINTENANCE AND REPAIRS OF DRAINS AND DITCHES.

AN ACT in relation to the construction, reparation and protection of drains, ditches and levees across the land of others for agricultural, sanitary and mining purposes, and to provide for the organization of drainage districts. [Approved and in force May 29, 1879. Approved June 7, 1897. In force July 1, 1897. Laws 1897, p. 206.]

113. To require all persons owning land to clean stream.

114. Penalty for failure to comply with above Section.

113. To require all persons owning land to clean streams.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That all persons owning land in this State shall clean annually any and all brush, trees, logs and other impediments to the flow of water in the bed of any stream, however small, and extending from the top of one bank to the top

(1) *Petition for Dissolution of Drainage District.*

State of Illinois, }
 _____ County, } ss.

To the Honorable the Judge of the County Court of said county:

The undersigned, being four-fifths of the adult land owners in drainage district No. _____, and owning three-fourths of in area of all the assessed lands therein, respectfully petition for the dissolution of said drainage district.

Dated this _____ day of _____, A. D. 19—.

of opposite bank of any such stream, as far as any such stream shall run or border the land of any owner, and when any stream shall run between the lands of two or more owners, each party shall clean his part of such stream: *Provided*, That streams or runs less than fifteen feet wide, and the rivers of this State, shall not be included herein, and this Act shall not interfere with fencing, flood-gates, bridges, culverts, etc., etc.

114. Penalty for failure to comply with above section.] § 2. In case of failure to comply with the above section of this Act, the tax assessor shall, when he assesses the land of any such owner, inquire whether or not section one of this Act has been complied with by any such land owner, and if such land owner has failed to have complied with the requirements of this Act by the first day of May of each year, the assessor shall note the fact on the assessment book opposite the land of such owner, and the county clerk is hereby required to extend ten dollars drainage tax against each forty-acre tract or fraction thereof, as a penalty for such failure, and five dollars on each such tract shall be added each successive year, and extended by such clerk on the tax books until this Act shall be complied with by each land owner or owners, said money to be collected as other taxes, and paid into the school fund of the town wherein the land is, and used in the school district where the land is situated.

In case of failure to comply with the above section of this Act, the person or persons so failing, shall be liable for all damages occasioned thereby to the person or persons, corporation or municipality injured thereby, to be recovered in any of the courts of this State having competent jurisdiction thereof.

FOR AGRICULTURAL AND SANITARY PURPOSES.

AN ACT to repeal an Act entitled, "An Act to amend Sections 76 and 89a of an Act entitled, 'An Act to provide for drainage for agricultural and sanitary purposes and to repeal certain Acts therein named,'" approved June 27, 1885, in force July 1, 1885, as amended by Act approved June 21, 1895, in force July 1, 1895; approved June 10, 1897, in force July 1, 1897, and to re-enact said Section 76 and to legalize proceedings had and drainage districts organized under said Section 76. [Approved May 10, 1901. In force July 1, 1901. Laws 1901, p. 162.]

115. Repeals certain sections.

116. Certain actions legalized.

115. Repeals certain sections.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That an Act entitled, "An Act to amend Sections 76

and 89a of an Act entitled, 'An Act to provide for drainage for agricultural and sanitary purposes and to repeal certain Acts therein named,' approved June 27, 1885, in force July 1, 1885, as amended by Act approved June 21, 1895, in force July 1, 1895, approved June 10, 1897, in force July 1, 1897, be, and the same is hereby repealed.

116. Certain actions legalized.] § 2. That whereas, by the the said Act it was intended to amend Sections 2 and 15a of the said Act intended to be amended, but through inadvertency reference was made to the section numbers of Chapter 42, Hurd's Revised Statutes, instead of to the section numbers of the Act itself, all actions had and all drainage districts formed under said Section 76 of the said Act, being the section in reference to districts by users, be, and the same are hereby, legalized and made legal.

¶ 117, § 1; ¶ 118, § 2; ¶ 119, § 3. **Repealed.** See ¶ 124, § 5, post. Laws 1913, p. 299.

PUMPING PLANTS—CONSTRUCTION, MAINTENANCE AND OPERATION

AN ACT to provide for constructing pumping plants and maintaining the same in operation, in drainage and levee districts and special drainage districts heretofore or hereafter organized, and to legalize and validate former proceedings, assessments, bond issues, indebtedness, and expenditures in regard to, or on account of the erection, maintenance and operation of pumping plants, and to repeal an Act therein named. [Approved and in force June 27, 1913. Laws 1913, p. 299.]

120. Pumping plants in districts having combined system of drains—petition to county court.
121. Notice of hearing on petition.
122. Hearing on petition—acquisition of right of way—special assessment—apportionment for maintenance.
123. Validation of former proceedings.
124. Repeals Act of 1905—rights saved.
125. Emergency.

120. Pumping plants in districts having combined system of drains—Petition to county court.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That in all drainage and levee districts, and special drainage districts, heretofore organized, or to be hereafter organized, under any law of this State authorizing a combined system of drains,

ditches, and levees, it shall be lawful to construct and maintain in operation as a part of the drains or ditches of such district one or more pumping plants, whenever the flow of the water in any of such drains or ditches is, or will be, obstructed by the erection of any levee, or levees, now built, or to be built, as a part of the work of improvement of said district, and it is deemed necessary for the disposition of the surface water, seepage or rainfall in such district to maintain the flow of the water in such drains or ditches by elevating it over or forcing it through such obstructing levee or levees; such pumping plant or plants to be constructed and maintained in operation out of the funds raised, or to be raised, by special assessment on the lands of said district to be benefited thereby in the manner provided by law for assessing benefits, and as a part of the drainage and levee work of said district; and to be done upon the order of the county court of the county in which the district, or the major part thereof, is located; such order to be entered, if in the judgment of the court upon the hearing of any petition presented therefor, as hereinafter directed, it shall appear to the court to be for the best interest of said district and of the owners of land therein, that such pumping plant or plants be constructed and maintained in operation in said district as a part of the drainage system thereof. In districts hereafter organized it shall be sufficient to include in the petition for the organization of such district a general description of such pumping plant or plants, together with the other proposed work, as is now provided by law. In all such districts heretofore organized (or in districts hereafter organized in which the original petition for organization does not include a pumping plant as a part of the drainage system of said district) the court may order the construction of such pumping plant or plants, together with such additional work as may be needed, when petitioned therefor by a majority of the owners of land within said district who are of lawful age and represent at least one-third in area of such lands or on the petition of one-third of such land owners who represent the major portion of the area of said lands, or on the petition of the commissioners of said district, accompanied by an itemized statement of accounts made by the commissioners, under oath, showing the moneys received by the district and the manner in which the same has been expended, together with plans, plats, profiles and specifications of such proposed pumping plant or plants (and such other additional work, if any) together with an estimate of the cost of constructing the same, and also an estimate of the amounts necessary to

be annually raised to keep the other work in repair and to maintain said pumping plant or plants in operation.

121. Notice of hearing on petition.] § 2. Upon said petition being filed the clerk of said court shall cause three weeks' notice of the presentation and filing thereof addressed, "To all persons interested," to be given in the same manner in all respects as provided in section 3 of an Act entitled, "An Act to provide for the construction, reparation and protection of drains, ditches and levees across the lands of others for agricultural, sanitary and mining purposes, and to provide for the organization of drainage districts," approved and in force May 29, 1879, as subsequently amended, except that instead of a more particular description it shall be sufficient for said notice to contain a general description of the proposed pumping plant, or plants, and other work proposed in said petition.

122. Hearing on petition—Acquisition of right of way—Special assessment—Apportionment for maintenance.] § 3. Upon such hearing the petitioners and any person interested may appear and be heard in favor of, or in opposition to, said petition, and shall have the same right of appeal as in cases arising under section 16 of said Act of May 29, 1879. In case the prayer of the petition is granted the court shall find and determine from the evidence the total amount necessary to be raised annually to maintain such pumping plant or plants in operation, as a part of the drainage system of said district; and thereafter the commissioners shall acquire the land and right of way for such pumping plant, or plants, and other work, as now provided by law, and a special assessment shall be made on the lands of said district to be benefited thereby for the construction of such pumping plant, or plants, and other work, if any, in the manner provided by the Act under which such district is organized, in cases of original assessments, except that the commissioners and jury shall apportion the amount so found by the court as necessary to be raised annually to maintain such pumping plant or plants in operation among the several tracts of land of said district in proportion to the amount each will be benefited by maintaining such pumping plant or plants in operation, and such proportionate amount may be in addition to any limitations now imposed by law upon the "annual amount of benefits" to be col-

lected from such tract for keeping the other work of said district in repair, but shall be included therewith and be collected at the same time and in the same manner.

123. Validation of former proceedings.] § 4. That all proceedings, assessments, bond issues, indebtedness, and expenditures heretofore had, made, or incurred in regard to or on account of the erection, maintenance and operation of pumping plants in any district organized under any law of this State be and the same is hereby declared to be in all respects legal and valid.

124. Repeals Act of 1905—Rights saved.] § 5. Be it further enacted, that an Act entitled, "An Act to amend section 1 of the Act entitled, 'An Act to provide for the erection, maintenance and operation of pumping plants in certain drainage and levee districts, and to legalize and validate former proceedings, bond issues, indebtedness and expenditures in regard to, or on account of, or with a view to the erection, maintenance and operation of such pumping plants,' approved and in force May 13, 1905, as amended by an Act approved May 20, 1907, in force July 1, 1907," approved June 7, 1911, in force July 1, 1911, be and the same is hereby repealed, saving and reserving, however, any rights that may have heretofore accrued thereunder.

125. Emergency.] § 6. And Whereas, A number of drainage districts in this State are now without power to construct and maintain in operation pumping plants; therefore, an emergency exists, and this Act shall take effect and be in force from and after its passage.

CERTAIN DISTRICTS AUTHORIZED TO ACQUIRE, MAINTAIN
AND OPERATE DREDGE BOATS FOR THE CONSTRUCTION AND PRESERVATION OF DRAINS,
DITCHES AND LEVEES.

AN ACT to authorize certain drainage and levee districts to acquire, maintain and operate dredge boats for the construction and preservation of drains, ditches and levees. [Approved and in force May 16, 1905. Laws 1905, p. 195.]

126. When commissioners may own and maintain dredge boats.

127. Emergency.

126. When Commissioners may own and maintain dredge boats.] § 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly:* That whenever the drainage commissioners of any drainage and levee district, heretofore or hereafter organized under an act entitled, "An Act to revise

and amend an Act and certain sections thereof, entitled, 'An Act to provide for the construction, reparation and protection of drains, ditches and levees, across the lands of others, for agricultural, sanitary and mining purposes, and to provide for the organization of drainage districts,' approved and in force May 29, 1879, as amended by certain Acts herein entitled, to repeal certain laws therein named." Approved June 30, 1885, in force July 1, 1885, shall deem it necessary for such district to own, maintain and operate one or more dredge boats for the construction and preservation of its drains, ditches and levees, they may, with the approval thereof by the county court in the county in which the district or any part thereof is located, purchase or build and maintain and operate one or more dredge boats for the purposes aforesaid and pay for the same out of any funds of said district arising from any special assessments, heretofore levied, for the construction and maintenance of the system of drains, ditches and levees of such district.

127. **Emergency.]** § 2. Whereas, An emergency exists, therefore this Act shall take effect and be in force from and after its passage.

PAYMENT OF ASSESSMENTS IN DRAINAGE DISTRICTS.

AN ACT to extend the time and provide for the payment of assessments of benefits in drainage districts. [Approved and in force May 22, 1885. Laws 1885, p. 74.]

128. Petition—What it contains—Time and place of hearing.

129. Notice of filing petition.

130. Evidence in support of petition.

131. Hearing—Consent of owners of bonds—Order—Effect of, on assessment.

132. Commissioners may borrow money—Issue bonds, etc.

133.—Assessment roll—Lien—Notice—Release.

134. Emergency.

128. **Petition—What it contains—Time and place of hearing.]** § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That whenever a petition signed by a majority in number of the adult owners of lands lying in any drainage district, or drainage and levee district, organized under any law of this State, shall be filed with the clerk of the county court, or any justice of the peace, or town clerk, having custody of the records of such district, representing that an assessment of benefits has been made against the lands in such

district for the construction of the proposed drains and works of such district and confirmed as required by law, and is unpaid in whole or in part, and that it would promote the interest of the land owners in such district to extend the time for the payment of such assessments to a time named in the petition, or have the same made payable in installments at such time or times and amounts mentioned in the petition, or to issue bonds not exceeding in principal and interest the amount of said assessments or any installment thereof, it shall be the duty of the clerk of the county court, justice of the peace or town clerk to fix the time and place for the hearing of said petition, which shall be not less than fifteen days from the filing thereof, and the time fixed by the clerk of the county court may be on any day of a probate or common law term of said court.

129. Notice of filing petition.] § 2. Upon the presentation of such petition the clerk of the county court, justice of the peace, or town clerk, shall give at least two weeks' notice addressed "To all persons interested" of the filing of such petition; and that the same is in relation to the time and manner of paying the assessments in said district, and when and where said petition will be heard, by posting notices in six of the most public places in such district, and by publishing a like notice in some newspaper published in the county in which said district or a greater part of the land thereof is situated. Affidavit of such posting and publication or the certificate of the clerk, justice of the peace or town clerk, that such notice was given shall be sufficient evidence thereof.

130. Evidence in support of petition.] § 3. The affidavit of two or more persons who are signers of such petition, or any two commissioners of said district, stating that they have examined the same and that they believe that said petition is signed by a majority of the adult owners of the land in such district, and that the matters and things alleged in said petition are true, shall be *prima facie* evidence of such facts, or other evidence may be heard by the court in support of the petition, at which time any other adult owner of land in said district may sign said petition.

131. Hearing—Consent of owners of bonds—Order—Effect of, on assessment.] § 4. On the day fixed in said notice, the court, justice of the peace or drainage commissioners, if the proceedings of the district are with the town clerk, shall examine said petition, and if it is determined from the evidence, that the same is signed by a majority of the adult owners of the

lands assessed in such district, the court, justice of the peace or commissioners, shall make a written record of such findings, and if the holders or holders of all bonds, if any, issued by said district which are a lien upon such assessment appear and enter their consent in writing thereto, the court, justice of the peace or commissioners shall also enter of record an order granting the prayer of said petition according to the allegations thereof, and the owners of lands assessed in such district shall pay their respective assessments according to such order together with interest thereon at the rate of six per cent per annum from the time the same became due under the prior order. And such finding shall stand in lieu of any other prior order of the court, justice of the peace or commissioners, in relation to the time of payment of such assessments, and all proceedings to enforce the collection of such assessment of benefits under any such prior order shall be stayed. Upon a certified copy of the findings under such petition being presented to the county collector, treasurer or collector of such district, he shall stay all proceedings to collect any assessments under such prior order, and the collection of said assessments under the order made in pursuance of said petition shall be enforced in the manner now provided by the law under which such district was organized or other laws in force.

132. Commissioners may borrow money—Issue bonds, etc.]

§ 5. The commissioners of such district may borrow money to an amount of principal and interest, not exceeding ninety per cent of the amount of assessments unpaid at the time of borrowing, for the construction of the proposed work in said district, and for the payment of any indebtedness they may have lawfully incurred, and may secure the same by bonds bearing interest at the rate of not exceeding six per cent per annum, and not running beyond one year after the last assessment, or installment of assessments on account of which money is borrowed shall fall due, which bonds shall constitute a lien upon the assessment for the payment of the principal and interest thereof, or such bonds may be issued to the amount of any one installment not exceeding ninety (90) per cent thereof, and constitute a lien on such installment alone, falling due in one year after such installment becomes due, but such installment shall be particularly designated in such bond. No irregularity in the proceedings either before or after the organization of the district or in the assessment of benefits, or in the extension of the time for the payment of the same, shall in any manner affect

the validity of the bonds or coupons issued in pursuance of this Act.

133. Assessment roll—Lien—Notice—Release.] § 6. The assessment roll of any district, when recorded in the recorder's office of the county in which the lands are situated, shall constitute a lien on the lands assessed, from the time of filing until paid. The proceedings of the county court shall be a sufficient notice of such lien upon the land situated in the county in which the proceedings are had, and such proceedings shall be a lien until such assessments are paid. When an assessment against any tract of land has been fully paid, it shall be the duty of the treasurer of such district to sign and deliver to the owner of such land, a release in full, which shall discharge such owner from all further liability to pay the same. The release may be recorded in the recorder's office of the county where such lands are situated.

134. Emergency.] § 7. Whereas, the corporate authorities of many drainage districts organized under the laws of this State have ordered the assessments of such districts to be paid in such manner as to become unnecessarily burdensome to the owners of lands therein; therefore, an emergency exists, and this Act shall take effect and be in force from and after its passage.

MONEY TO BE REFUNDED.

AN ACT to provide for the refunding of moneys levied and collected under and by virtue of "An Act to provide for the construction and protection of drains, ditches, levees and other works," approved April 24, 1871, in force July 1, 1871, and to provide for the recovery of the same by action. [Approved and in force May 14, 1879.]

- 135. Taxes to be refunded.
- 136. Refusal to refund.
- 137. Emergency.

135. Taxes to be refunded.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That all taxes or assessments that may have been levied and collected under and by virtue of the provisions of an Act entitled "An Act to provide for the construction and protection of drains, ditches, levees and other works," approved April 24, 1871, in force July 1, 1871, that have not been expended as provided therein, and that yet remain in the hands of the county

collectors, drainage commissioners, town collectors or other officers who may have collected the same by virtue of said Act, shall refund the several amounts yet unexpended pursuant to the terms of said Act, to the respective parties from whom the same may have been collected.

136. Refusal to refund.] § 2. That upon the refusal of any such officers to refund moneys remaining in their hands, as required by section one (1) of this Act, the parties entitled to the same may recover the amount due them by either an action of debt or assumpsit, or may sue such officers on their official bonds.

137. Emergency.] § 3. Whereas, an emergency exists, therefore this Act shall take effect and be in force from and after its passage.

TO LEGALIZE DRAINAGE DISTRICTS AND ASSESSMENT OF BENEFITS.

AN ACT to legalize drainage districts organized in pursuance of the Act therein named, and to legalize the assessment of benefits in such districts. [Approved May 24, 1881. In force July 1, 1881. Laws 1881, p. 86.]

138. Legalizing Districts.

139. Legalizing and remitting assessments.

138. Legalizing Districts.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That in all cases of the organization of drainage districts, under the provision of an Act entitled "An Act to provide for the construction, reparation, and protection of drains, ditches and levees across the lands of others, for agricultural, sanitary and mining purposes, and to provide for the organization of drainage districts," approved and in force May 29, 1879, where by order of the court to whom the petition for such organization was presented, the boundaries of such district have been changed so as to deviate from the description set forth in said petition, such districts shall be held to have been and to be legally organized and to be drainage districts, with boundaries as defined in said orders, for all purposes contemplated in said Act and the Act of the thirty-second (32d) general assembly amendatory thereof.

139. Legalizing and remitting assessments.] § 2. That in any drainage district organized as aforesaid, wherein the jury

have assessed the full amount of benefits against each tract of land of such district found by them to be liable to assessment for benefits, instead of assessing against each tract its proportionate share of the estimated cost of the work, and expenses of the proceeding, as provided in section eighteen (18) of said Act, so much of such assessment as exceeds the estimated cost of the work and expenses of the proceeding is hereby remitted, and the said assessment is hereby legalized as to the proportion thereof not remitted as aforesaid, and to that extent shall be deemed and held to be a valid assessment to all intents and purposes, and each tract of land subject thereto to the extent of its proportion thereof: *Provided*, in any case of appeal from any such assessment now pending, the persons prosecuting the same shall not be precluded from procuring such reduction of the amount assessed against him or her, as they might have procured if such assessment had been made upon a correct basis.

LEGALIZING DRAINAGE DISTRICTS.

AN ACT to legalize drainage districts organized in pursuance of the Act hereinafter mentioned, and to legalize the assessments or benefits in such districts and certain sales made in pursuance thereof, and to authorize drainage districts to purchase lands at certain sales for delinquent special assessments. [Approved and in force May 29, 1883. Laws 1883, p. 78.]

140. Certain districts legalized.

141. Certain special assessments legalized.

142. Drainage district may purchase at sale—Rights of as purchaser.

143. Emergency.

140. **Certain districts legalized.] § 1.** *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That all drainage districts organized under the provisions of an Act of the General Assembly, entitled “An Act to provide for the construction, reparation and protection of drains, ditches, and levees across the lands of others, for agricultural, sanitary and mining purposes, and to provide for the organization of drainage districts,” approved and in force May 29, 1879, for the repair and maintenance of any levee or levees constructed under any law of the State of Illinois, passed prior to the first day of January, 1879, be and the same are hereby legalized, and all such districts shall be held to have been and to be legally organized under the laws of the State.

141. **Certain special assessments legalized.]** § 2. That all special assessments made in any drainage district organized as aforesaid, and under the Act of the General Assembly aforesaid, for the repair and maintenance of any levee or levees constructed as aforesaid, be and the same are hereby in all things legalized; and all such assessments, whether made to repair any such levee or levees, or to keep the same in repair and meet the annual expenses of keeping said levee or levees in repair, shall be held and construed to have been legally and regularly made and assessed.

142. **Drainage district may purchase at sale—Rights of as purchaser.]** § 3. When a return to the county collector has been made, or shall hereafter be made, of any real estate located in any drainage district established under the Act of the General Assembly named in the first section of this Act, delinquent for any special assessment or annual installment thereof, or any annual assessment levied by any drainage district pursuant to law, which assessment or installment thereof, or annual assessment is required by law to be included in the advertisement and notice of application for judgment for State and county taxes, and when any such return, advertisement and notice shall be followed by a sale of such delinquent real estate for the collection in whole or in part of any such assessment, installment thereof or annual assessment returned as aforesaid, the drainage district in which such real estate is situate may become the purchaser at such sale, and may designate and appoint some officer or person to attend and bid at such sale in its behalf: *Provided*, the county collector shall not be required to make demand for the payment of any such special assessment, installment thereof or annual assessment after the same has been returned to him: *and provided also*, it shall not be necessary for any drainage district which has become the purchaser at any such sale to protect the same from subsequent forfeiture and sale as required of purchasers in section 211 of the revenue laws of the State; and all such sales of delinquent lands heretofore made under the Act aforesaid, where any drainage district has become the purchaser, are hereby legalized and declared valid sales.

143. **Emergency.]** § 4. *Whereas*, some question exists as to the regularity and legality of the organization of certain drainage districts, and certain assessments made under the Act of the General Assembly aforesaid, therefore an emergency exists, and this Act shall be in force from and after its passage.

LEVEES.

AN ACT to enable the commissioners of drainage districts to contract with railroad companies to construct or keep in repair any levee or levees now constructed or to be hereafter constructed in such districts, and to grant to such railroad companies a right of way over, on, along or across such levees. [Approved June 5, 1889. In force July 1, 1889. Laws 1889, p. 124.]

144. Drainage commissioners may contract with railroad companies and grant right of way.

144. Drainage commissioners may contract with railroad companies and grant right of way.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That the commissioners of all drainage districts which have been heretofore or may be hereafter legally organized under and by virtue of any and all laws of this State, shall by and with the consent and approval of the county court of the county wherein the greater part of any such district may lie, have, in addition to the powers now conferred upon such commissioners, the legal right and power, to contract with any legally organized railroad company or companies to construct or keep in repair or to construct and keep in repair the whole or any portion of any levee or levees now constructed or which may hereafter be constructed in any such district, upon such terms as shall be for the best interests of such district; and for such purpose said commissioners shall have the power to pledge or pay to such railroad company or companies the whole or any portion of the revenues of such district; and for such purpose, the said commissioners shall have the further power to grant to such railroad company or companies the right of way for the construction and operation of a railroad or railroads over, on, along or across such levee or levees.

DRAINS, DITCHES AND LEVEES FOR AGRICULTURAL, SANITARY
AND MINING PURPOSES.

AN ACT to provide for the construction, reparation and protection of drains, ditches and levees, across the lands of others, for agricultural, sanitary and mining purposes, and to provide for the organization of drainage districts. [Approved and in force May 29, 1879. Laws 1879, p. 120.]

145. Drainage districts.
146. Organizing drainage district—Petition—Proceedings.
147. Notice of filing petition—Affidavit—Publication.

148. Jurisdiction of county court.
149. Hearing—Finding of court—Petition.
150. Proceedings since May 20, 1907 declared valid.
151. Official oath.
152. Commissioners—Chairman—Secretary.
153. Quorum.
154. Commissioners to examine land—Report.
155. Dismissal of proceedings.
156. Surveys—Profiles, etc.
157. Alteration of plans—Boundaries—Assessment of benefits.
158. Filing Report—Hearing—Confirmation.
159. Confirmation—Review—Modification.
160. Referring report—Adjournment.
161. Order of confirmation—Appeals—Validity.
162. Commissioners to acquire right of way—Roll of assessments of benefits and damages.
163. Filing of roll of assessments—Hearing before jury.
164. Organization of jury—Examination of lands—Verdict—Confirmation—Judgment.
165. Assessment for repairs.
166. Assessment for benefits.
167. Correction of assessment. [Repealed.]
168. Hearing objections—Corrections. [Repealed.]
169. Proceedings on hearing. [Repealed.]
170. Confirmation and approval. [Repealed.]
171. Appeal bond. [Repealed.]
172. Trial on appeal. [Repealed.]
173. Correction of assessment roll—Confirmation of assessment—Appeal, etc. [Repealed.]
174. Payment of assessment of benefits in installments.
175. Annual amount of benefits due and payable on the 1st day of September annually—Borrowing money—Interest.
176. Certified copy of assessment delivered to Commissioners.
177. Commissioners to have power to contract in the corporate name of district.
178. Treasurer—Bond.
179. Duties—Term of office—Compensation for services.
180. Interest on installments.
181. Bond of commissioners.
182. Notice of assessment.
183. Delinquent assessment—Collector.
184. Act to be liberally construed.
185. Payment before sale.
186. Letting contracts—Commissioners to advertise for bids.
187. Suits, money to be used under direction of court—Additional assessments.
188. Commissioners may borrow money.
189. Payment of damages.
190. Removal of commissioners—Vacancies.
191. Commissioners' report to court.
192. Pay of Commissioners and Clerk.
193. Petition to be relieved of assessment.
194. Commissioners may petition for abandonment before contract let.
195. Entry upon lands.
196. Drainage and levy districts may be taken, etc.
197. Assessment book—Drainage record.

198. Proceedings where costs do not exceed \$2,000.
199. Proceedings before justice.
200. Refusal of commissioner to perform duty.
201. No second tax—upper ditch benefited by lower ditch.
202. When district empties its waters into ditch or lower district—proceedings.
203. Assessment of benefits—appointment of commissioners.
204. Assessments—how made.
205. Corporate authorities assessed for benefits and damages—proceedings.
206. Commissioners to give notice to railroad company to construct or enlarge bridge or culvert, etc.
207. Meaning of the word “ditch”—what Act includes.
208. Assessing lands benefited outside of district—proceedings.
209. Constructing additional ditches—proceedings.
210. Repeal.
211. Emergency.
212. When assessment invalid as to one or more tracts—proceedings.
213. Proceedings to make assessments valid.
214. Appointment of commissioners.
215. Commissioners’ oath.
216. Bonds—how attested—certified statement thereon.
217. When question of organizing drainage district may be submitted to vote—election.
218. Penalty for injuring drain.
219. Liable for damages for injuring drain.
220. Act construed.
221. Repeal.
222. Emergency.
223. Drainage districts under this Act declared legally organized.
224. Credit on assessment for work.
225. How commissioners may sell or lease land.
226. Real estate—when and how sold.
227. To what this Act applies.
228. Repeal—rights saved.
229. Drainage districts formed by mutual agreement—commissioners.
230. Repeal.
231. Emergency.

145. Drainage districts.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That drainage districts may be organized and established as hereinafter provided.

146. Organizing drainage district—Petition—Proceedings.]

§ 2. Whenever a majority of the owners of lands within a district proposed to be organized, who shall have arrived at lawful age and who represent one-third in area of said land, or wherever one-third of the owners of lands within a district proposed to be organized who shall have arrived at lawful age and who represent a major portion in area of the said lands, desire to construct a drain or drains, ditch or ditches, levee or levees, or other work to be known in this Act as a "drainage and levee district" or "drainage and levee work," across the lands of others, for agricultural, sanitary or mining purposes, or to maintain and keep in repair any such drain or drains, ditch or ditches, levee or levees, heretofore constructed under any law of this State, or to establish in said district a combined system of drainage or protection from overflow, independent of levees, for agricultural, sanitary or mining purposes and maintain the same by special assessments upon the property benefited thereby, such owners may file in the county court of any county in which the greater part of the lands so proposed to be organized into a drainage district, shall lie, a petition signed by the requisite number of land owners owning the required area as in this section provided within said district proposed to be organized as aforesaid, setting forth the proposed name of the said drainage district, the necessity of the same, with a description of the proposed starting points, routes and termini of the work and a general description of the lands proposed to be affected, with the names of the owners, when known, and if the purpose of said owners is the repair and maintenance of a ditch or ditches, levee or levees, or other work, heretofore constructed under any law of this State, said petition shall give a general description of the same, with any particulars as may be deemed important and may pray for the organization of a drainage district, by the name and boundaries proposed for the appointment of commissioners under this Act. [As amended by Act approved and in force June 27, 1913. Laws 1913, p. 261.]

147. Notice of filing petition—Affidavit—Publication.] § 3.

Such petition being filed, the clerk of said county court shall cause three (3) weeks' notice of the presentation and filing of such peti-

tion to be given, addressed "to all persons interested" by posting notices thereof at the door of the court-house of the county or counties in which the district is situated, and in at least ten (10) of the most public places in such proposed district, and also by publishing a copy thereof at least once a week, for three successive weeks, in some newspaper or newspapers published in the county from which the larger part of said district is proposed to be formed. Such notice shall state when and in what court said petition was and is filed; the starting point, route, termini and general description of the proposed work; the boundaries and name of the proposed drainage district, and at what term of the said court the petitioners will ask a hearing of said petition: *Provided*, that it shall not invalidate said notice if no description of drains or ditches is given therein. If any of the land owners of said district are non-residents of the county or counties in which the proposed district will lie, the petition shall be accompanied by an affidavit, giving the names and places of residence of such non-residents, if known, and if unknown, stating that, upon diligent inquiry, their places of residence cannot be ascertained; and the clerk shall send a copy of the notice aforesaid to each of said non-residents, whose residence is known, within three (3) days after the first publication of the same. The certificate of the clerk, or the affidavit of any other creditable person, affixed to a copy of said notice, shall be sufficient evidence of the posting, mailing and publication of said notices. [As amended by Act approved June 30, 1885. In force July 1, 1885. Laws 1885, p. 111.]

148. **Jurisdiction of County Court.]** § 4. The county court in which said petition shall be filed may hear the petition at any probate or common law term, and may determine all matters pertaining thereto, and all subsequent proceedings of the district when organized under this Act, and may adjourn the hearing from time to time, or continue the case for want of sufficient notice, or other good cause. The court, upon application of the petitioners, shall permit the petition, affidavit and orders to be amended, and no petitioner shall have the right to withdraw from said petition, except by the consent of the ma-

jority of the other petitioners thereon, or where it shall be shown to the satisfaction of the court that the signature of the petitioner was obtained by fraud or misrepresentation. [As amended by Act approved and in force May 20, 1907. Laws 1907, p. 274.

149. **Hearing—Finding of Court—Petition.] § 5.** On the hearing of any petition filed under the provisions of this chapter, all parties through or upon whose land any of the proposed work may be constructed, or whose lands may be damaged or benefited thereby, may appear and contest the necessity or utility of the proposed work, or any part thereof, and the contestants and petitioners may offer any competent evidence in regard thereto. It shall be the duty of the court to hear and determine whether or not the said petition contains the signatures of a majority of the owners of lands within said proposed district who are of lawful age, and who represent one-third in area of the lands proposed to be affected by such work, or that the said petition is signed by one-third ($\frac{1}{3}$) of the owners of lands in said proposed district who have arrived at lawful age and who represent a major portion in area of the lands proposed to be reclaimed or benefited, and the affidavit of any three (3) or more of the signers of said petition, that they have examined said petition and are acquainted with the locality of said district, and that the said petition is signed by a majority of such owners, who are of lawful age, who represent at least one-third in area of the lands proposed to be affected by such work, or that said petition is signed by one-third ($\frac{1}{3}$) of the owners of lands in said proposed district who have arrived at lawful age and who represent a major portion in area of the lands proposed to be reclaimed or benefited, may be taken by the court as *prima facie* evidence of the facts stated therein; or the oath or affirmation before said court, or the affidavit of any person, properly taken and certified by any person or court authorized to take acknowledgments of deeds to real estate, in this State, giving the age of such party, and his or her ownership of lands, to be named in such oath, affirmation or affidavit, by proper description, shall be sufficient evidence to the court of such facts: *Provided*, that all deeds made for the purpose of establishing or defeating the prayer of said petition, not made in good faith and for a valuable consideration, shall be taken and held to be in fraud of the provisions of this Act, and the holders thereof shall not be considered as owners thereof. If the court, after hearing any and all competent evidence, that may be offered before it for and

against the said petition, shall find the same has not been signed as hereinbefore required, the said petition shall be dismissed at the cost of the petitioners; but if the court shall find that the petition has been signed, as heretofore provided, the court shall so find, and such finding shall be conclusive upon the land owners of such district that they have assented to and accepted the provisions of this Act; and if it shall further appear to the court that the proposed drain or drains, ditch or ditches, levee or other works, is or are necessary or will be useful for the drainage of the lands proposed to be drained thereby, for agricultural, sanitary or mining purposes, the court shall so find, and appoint three (3) competent persons as commissioners, each of whom shall hold his office until his successor is appointed, as hereinafter provided, to lay out and construct such proposed work. In case the lands to be drained or levied shall be situated in different counties, not more than two (2) of the commissioners shall be chosen from any one of such counties. If the court shall find against the petitioners, the petition shall be dismissed at the cost of the petitioners. [As amended by Act approved and in force May 29, 1909. Laws 1909, p. 182.]

150. Proceedings since May 20, 1907, declared valid.] § 5a. In any case, or cases, wherein any petition has been filed, or proceedings been had, for the organization of a drainage and levee district since the 20th day of May, A. D., 1907, wherein the petition was signed by one-third, only, of the owners of lands to be affected, who had arrived at lawful age, and who represented a major portion of the lands to be affected, and the court in which such proceedings were had so found and proceeded to appoint commissioners, the proceedings so had and orders thereupon made, if the same be in other respects valid and sufficient, shall be deemed, held and esteemed to all intents valid and sufficient as though this Act had been at the time and times, respectively, in full force and effect. [As amended by Act approved and in force May 29, 1909. Laws 1909, p. 182.]

151. Commissioners—Official oath.] § 6. Before entering upon the duties of their office, such commissioners shall take and subscribe to an oath to faithfully discharge the duties of their office without favor or partiality, and to render a true account of their doings to the court, by which they are appointed, whenever required by law or order of the court, which oath shall be filed with the clerk. [As amended by Act approved June 30, 1885. In force July 1, 1885. Laws 1885, p. 113.]

152. Chairman—Secretary.] § 7. They shall elect one of their number chairman, and may elect one of their number as

secretary. [As amended by Act approved June 30, 1885. In force July 1, 1885. Laws 1885, p. 113.

153. Quorum.] § 8. A majority of the commissioners shall constitute a quorum and a concurrence of a majority of their number in any matter within their duties shall be sufficient. [As amended by Act approved June 30, 1885. In force July 1, 1885. Laws 1885, p. 113.

154.—Commissioners to examine land—Report.] § 9. Immediately after their appointment the commissioners shall examine all the land proposed to be drained or protected and the lands over or upon which the work is proposed to be constructed, and determine:

First—If drainage and levee work is proposed in the petition, whether the starting point, route and terminus of the proposed work and the proposed location thereof is or are in all respects proper and feasible; and if not, what is or are so.

Second—The probable cost of the work mentioned in the petition, including all incidental expenses, and the cost of the proceedings therefor.

Third—The probable annual cost of keeping the same in repair after the work is completed.

Fourth—What lands will be injured by the proposed work, and the probable aggregate amount of all damages such lands will sustain by reason of the laying out and construction of such work.

Fifth—What lands will be benefited by the construction of the proposed work, and whether the aggregate amount of benefits will equal or exceed the cost of constructing such work, including all incidental expenses, costs of proceedings and damages.

Sixth—Whether the proposed district, as set out in the petition filed, will embrace all the lands that may be damaged or benefited by the proposed work; and if not, to report what additional lands will be so affected.

Seventh—In case the prayer of the petition is for the purpose of repairing and maintaining a levee or levees, ditch or ditches, heretofore constructed under any law of this State, it shall be the duty of the commissioners to examine the said levee or levees, ditch or ditches, and the lands intended to be reclaimed thereby, and to report to the court—

First—Whether, in their opinion, said levee or levees, ditch or ditches, can with proper repairs be made sufficient to protect permanently said lands from overflow from high water, or to drain the same.

Second—The probable annual expense of keeping the same in such repair.

Third—What lands will be benefited thereby, and the probable aggregate amount of such benefits.

Fourth—Whether the aggregate annual amount of benefits will equal or exceed the annual cost of such repairs, including all incidental expense and costs of proceeding; and,

Fifth—Whether the proposed district will embrace all the lands that may be benefited by the maintenance of such levee or ditch, or combined system of drainage; and if not, to report what additional lands will be so affected, giving a description and the names of the owners thereof, which report shall be filed with the clerk of said court. [As amended by Act approved and in force May 29, 1909. Laws 1909, p. 182.]

155. Dismissal of proceedings.] § 10. If the commissioners shall find that such costs, expenses and damages are more than equal to the benefits which may inure to the lands in general of said district, by reason of the proposed work, they shall so report, and the proceedings shall be dismissed at the cost of the petitioners.

156. Surveys—Profiles, etc.] § 11. If the commissioners shall find that the proposed work, or such portion of the same as will be satisfactory to the petitioners, and work of a like nature on lands they propose to annex to said district, can be done at a cost and expense not exceeding such benefits, they shall proceed to have the proper surveys, profiles, plats, plans and specifications thereof made, and they shall report the starting point, route and termini of the levee, ditch, ditches or drains, or other work, and the dimensions of the same, and what ditches or parts thereof, should be opened or tiled, and the size of tile, if any is required, and shall report their conclusions and a copy of such surveys, profiles, plats, plans and specifications, to the court which appointed them. [As amended by Act approved June 30, 1885. In force July 1, 1885. Laws 1885.]

157. Alteration of plans—Boundaries—Assessment of benefits.] § 12. The commissioners shall not be confined to the point of commencement, route or termini of the drains or ditches or to the number, extent or the size, or the manner of constructing of the same, or the location, plan or extent of any levee, ditch or other work to that proposed by the petitioners, but shall locate, design, lay out, plan the same in such manner as they shall think will drain or protect the petitioners' lands with the least damage and greatest benefit to all lands to be affected

thereby; and any plans, ditches, drains or other work proposed by the commissioners may, on the application of any person interested, or the commissioners, be altered, or additional drains or other work shall be established by order of the court in such manner as shall appear to the court to be just. If the commissioners find that the proposed district, as described in the petition filed, will not embrace all the lands that will be benefited by the proposed work, or that it will include lands that will not be benefited, and not necessary to be included in said district for any purpose, they may extend or contract the boundaries of the proposed district, so as to include or exclude all such lands, as the case may be, and the boundaries adopted and reported by said commissioners may at any time before the court declares the district established, upon the application of the commissioners, or of any person interested, be altered by the court in such manner as shall appear to the court to be just; and the court may change the name of the district or proposed district, at the same time in the same order establishing a drainage district: *Provided*, the alteration of boundaries as aforesaid shall not have the effect of so far enlarging or contracting the proposed district that the petitioners will no longer constitute a majority of the adult land owners of the lands in such proposed district, who represent at least one-third of its area, or who constitute one-third of the adult land owners of the lands therein situated who represent a major portion in area of the lands therein. Any person or persons owning lands adjoining or contiguous to said proposed district may at any time by application in writing to said court, reasonable notice thereof having been previously given to the commissioners, annex his lands to said district; and if such application be made after the latest general assessment of benefits against the lands in said district as herein provided, the court, if the owners agree thereto in writing, or the commissioners, or a jury of said court, shall, on such application to annex, hear evidence and make the assessment of benefits against, or damage in favor of, the lands so annexed, and the court may order said assessments to benefits payable in installments corresponding as near as may be to the time of payments of general assessments and add the same to the general assessment roll of the district, and the collection of such additional assessments may be enforced as in other cases; such additional assessment roll shall also be recorded in the county court, and the same shall be a lien upon such lands from the filing thereof for record until paid. [As amended by Act approved and in force June 27, 1913. Laws 1913, p. 261.]

158. Filing report—Hearing—Confirmation.] § 13. After the appointment of the commissioners, as provided for in section

nine (9) of this Act, the cause shall be continued by the court to a day for the filing of their report, and in the event said commissioners are not ready to report on the day fixed, they may appear before the court and obtain a continuance or continuances until said report is ready to be filed, but such continuance or continuances shall in such instance be to a day certain, and all persons interested shall take notice of any such continuance or continuances. Upon said report being filed with the clerk of the court appointing such commissioners, the court shall fix a day not less than ten days nor more than four weeks from the filing thereof, for the hearing thereon: *Provided*, that in case the commissioners shall recommend that additional lands be embraced in the proposed district, the owner or owners of such lands shall be given notice by the commissioners, in the manner and for the time provided by section three (3) of this Act, of the hearing on said report. At the time of the hearing all persons may appear and contest the confirmation of said report or show that additional drains, ditches or other work should be constructed, or that the report ought to be modified in any particular, and may offer any competent evidence in support thereof; and the said report of said commissioners shall be *prima facie* evidence of the facts therein set forth. [As amended by Act approved and in force May 29, 1909. Laws 1909, p. 182.]

159. **Confirmation—Review—Modification.**] § 14. If upon the hearing the court shall be of the opinion that the objections are not well taken, or if no objection shall be made, it shall order the confirmation thereof. If it shall appear that additional ditches, drains and outlets, not named in the report, are necessary, or that the report ought to be modified in any particular, and the court shall be sufficiently informed in the premises, it shall modify the same to conform to the equities in the premises; or if not sufficiently informed, it shall order the commissioners to review and correct their report; and may make specific directions in what respect they shall reform their reports; and the court may make all necessary orders in the premises, either for the continuance of the hearing or other lawful purposes. [As amended by Act approved June 30, 1885. In force July 1, 1885. Laws 1885, p. 115.]

160. **Referring report—Adjournment.**] § 15. If the report be referred back to the commissioners for amendment, the court shall fix a day when the commissioners shall again present their report, in which case the hearing shall stand adjourned to that day, and no further notice shall be required thereof.

161. Order of Confirmation—Appeals—Validity.] § 16.
If, after hearing all objections, if any, to the report of the commissioners, and all applications, if any, to annex other lands to the proposed district, the court finds that a drainage or levee district should be organized, the plat of the same shall be recorded and an order be made according to the findings of the court, substantially as follows:

County Court of ——— county, ——— term, A. D. 19—.

In the matter of the petition of [*here insert names of the petitioners*], this day the report of ——— commissioners heretofore appointed by this court to examine the lands proposed to be drained or protected and the lands over which the work is proposed to be constructed [*if additional lands are recommended by the commissioners to be brought into the proposed district, insert here the giving of notice to the owners of such land, as required in section thirteen (13) of this Act*], and said report having been set down for hearing in the manner required by law, and the court having duly examined said report and having heard evidence concerning the same, and considered all objections to the same, it is ordered by the court that the report of said commissioners [*or, if said report has been modified by the court, as modified by the court*] be and the same is hereby confirmed; and the court further finds that the proposed work in said petition to be done will be useful for agriculture, sanitary or mining purposes to the owners of land within said proposed district; and the court also finds that the persons who have signed said petition are of lawful age and are a majority of the adult land owners, representing one-third in area [*or one-third of the adult land owners owning a major portion, as the case may be*] of the land to be affected by such proposed work. And the court further finds that the said drainage district of the corporate name mentioned in said petition, viz., ———, bounded as follows, ———, is duly established as provided by law.

.....County Judge

And upon entering such order of record, said district is hereby declared by law to be organized as a drainage district by the name mentioned in the petition, and with the boundaries fixed by the order confirming the report of the said commissioners, and said district is hereby declared to be a body politic and corporate, by the name mentioned in said order of court, with the right to sue and be sued, and to have perpetual succession, and may adopt and use a corporate seal; and the commissioners appointed as aforesaid and their successors in office shall, from the entry of such order of confirmation, constitute the corporate authorities of such drainage district, and shall exercise the functions conferred upon them by law.

Said order shall be final, and separate or joint appeals and writs of error may be taken to the Supreme Court by the parties affected thereby: *Provided*, the granting of an appeal or writ

of error to one or more persons, or the reversal of said order upon such appeal or writ of error by such person or persons separately or jointly shall not impair nor invalidate said organization as to all other persons not appealing nor suing out of such writs, nor shall such appeal or writ of error delay the work or proceedings so far as it affects the lands of such other persons. Nor shall it be a valid ground of objection on the part of any land owner upon said hearing, or upon an appeal from said order, or upon any writ of error attacking the said order, that any owner of other land has not received sufficient notice of the said proceedings, or that the said order is invalid as to the said owner of other lands; but such other owners and lands may be thereafter brought into and included in the said district, and assessed therein under the provisions of sections fifty-eight, sixty and sixty-one of this Act, when such other lands should properly be included in said district. [As amended by Act approved and in force June 27, 1913. Laws 1913, p. 262.

162. Commissioners to acquire right of way—Roll of assessments of benefits and damages.] § 17. After the order provided for in the foregoing section shall have been signed, the commissioners shall proceed to acquire the right of way and releases of damages for the construction of the proposed work, by agreement with the land owners so far as they may be able to agree with said land owners, and to make out an assessment roll in which shall be set down in proper columns the names of the owners when known, a description of the premises affected, in words or figures, or both, as shall be most convenient, the number of acres in each tract, and, if benefits are assessed against the same, the amount of the same against each tract; and if damages are allowed to the amount of the same against each tract they shall also include therein all railroads, public highways and municipal corporations to be affected by the proposed work, and the amount of benefits assessed against, and damages, if any accruing, to the track and right of way of said railways and public highways and roads, and the streets and alleys of such municipal corporations; and they shall, when directed by the court, also make an assessment of the “annual amount” of benefits which each tract will sustain by keeping said levees, ditches or other work in repair, and to maintain in operation pumping plants, if any there be in such district, all of which shall be known as the “Commissioner’s roll of assessments of benefits and damages.” [As amended by Act approved and in force June 27, 1913. Laws 1913, p. 263.

163. Filing of roll of assessments—Hearing before jury.]

§ 17a. Upon the filing of the "Commissioner's roll of assessments of benefits and damages," with the clerk of the court, the commissioners shall give ten days' notice in the manner provided by section three (3) of this Act, of the time and place when and where they will appear before the same court in which the petition was filed for the purpose of having a jury impaneled in accordance with the provisions of section six (6) of an Act entitled, "An Act to provide for the exercise of the right of eminent domain," approved April 10, 1872, in force July 1, 1872, and for the hearing before said jury, upon all questions of benefits and damages, to any of the land in said district.

Upon the hearing, the commissioners and all persons interested in the lands to be affected, shall have the same right of challenge of jurors as in other civil cases in the county courts of this State. When said jury is selected they shall be sworn to faithfully and impartially perform the duties required of them to the best of their understanding and judgment, and to make their assessments of benefits or of damages, or damages and benefits, as the case may be, according to law; and thereupon said commissioners, on behalf of said district, shall present and file as their claim against the several land owners and tracts of land, the assessment roll provided for in section seventeen (17) of this Act, which shall make out a *prima facie* case for the commissioners, and all parties to said proceedings shall be permitted to present to said jury their case in person or by counsel, and offer any competent evidence as to the amount of benefits which any land in said district will receive by reason of said proposed work, or as to the damages to land taken or damaged thereby over which the right of way has not been obtained, and after such evidence shall be presented and argument of counsel heard, the court shall instruct them as to the law and form of their verdict. [Added by Act approved and in force May 29, 1909. Laws 1909, p. 182.]

164. Organization of jury—Examination of lands—Verdict—Confirmation—Judgment.] § 17b. And thereupon said jury shall proceed to select a foreman and a clerk from said jury, and in charge of such foreman shall, in case any party in interest shall so request, proceed to examine the lands, railroads, streets, alleys and public highways to be affected by the proposed work. The jury shall ascertain to the best of their ability and judgment the benefits which will accrue to the lands, railroads, streets, alleys and public highways, to be affected by the said proposed work, and the damages to the lands taken or damaged thereby, over which the right of way for the construction of the said proposed work had not been obtained, and when directed by the court, the jury may

also ascertain the "annual amount" of benefits which each tract will sustain by keeping said levee, ditches or other work in repair, and said jury shall make out their verdict in which shall be set down in proper columns the names of the owners, when known, a description of the premises to be affected, in words or figures, or both, as shall be most convenient, the number of acres in each tract and the amount of benefits assessed, if any, and the amount of damages allowed, if any, against each tract, railroad, public highway, or municipal corporation; also, when required, the amount of "annual benefits," if any, which each tract will sustain by keeping said levees, ditches or other work in repair, and in finding such verdict they shall take into consideration their view of the premises as evidence (if such view shall have been requested by any party in interest) and consider it with the other testimony offered in the case and allowed by the court, which verdict when so completed shall produce the total sum of the estimated cost of the proposed work and the proceedings incident to the same, together with the annual amount of benefits which the lands will sustain by keeping said levees, ditches or other work in repair, when required, and the amount of damages allowed, and said verdict shall then be signed by the jury and filed in the court, and shall be taken and held to be the verdict of the jury upon all questions of benefits and damages arising in the proceedings; and thereupon the court shall confirm said verdict and enter up judgment upon said verdict, and cause the same to be spread upon the records and such judgment and verdict shall be a lien upon such lands after the said judgment, until paid. Appeals and writs of error shall be allowed therefrom as in cases of appeals from or writs of error to county courts in proceedings for the sale of lands for taxes or special assessments: *Provided*, that the granting of an appeal in any one or more cases, to one or more persons shall not operate to defer the collection of the judgment in other cases, but the collection in other cases shall proceed as if no appeal had been taken. When said appeals are decided, if the judgment of said county court shall be affirmed, or upon said case being remanded for a new trial, if judgment shall be in favor of said district, the county court shall order the judgment so rendered to be made a part of said judgment not appealed from, and the same shall be collected as if no appeal has been taken.

The court shall, if necessary, continue said cause to a day certain for the report of the verdict of said jury, and if said jury are not ready to file their verdict on the day fixed, said cause may be

continued from time to time until they have completed their verdict and have returned the same to the court, and all persons interested shall take notice of the time of filing and making said report by the jury.

The court may cause to be prepared and submit to said jury a form for their said verdict, including names of the owners and descriptions of the tracts to be affected, including the railroads, public highways and municipal corporations, with blanks for the said jury to fill with the amounts of benefits and damages as they shall find, and when completed the same may be placed in form by the court in the presence of said jury, or the said jury may be recalled at any time after being discharged to correct any errors or omissions therein. [As amended by Act approved and in force June 27, 1913. Laws 1913, p. 264.

165. Assessment for repairs.] § 17½. The amount assessed for keeping said levee or ditch in repair, shall not in the aggregate amount to a sum in any one year, greater than would be produced by thirty cents per acre on all lands within said district. In case such assessment of annual benefits is not made at the time of the original organization of said district or the same is thereafter found to be insufficient, the same may be provided for or increased in the same manner as herein provided for the levying of additional assessments in such districts.

In case the petition shall set out that a levee or ditch has been made under any law of this State and prays for an assessment of benefits to repair and keep in repair said levee or ditch, the commissioners shall cause to be made an assessment of benefits which said lands will sustain by repairing said levee or ditches, and also the "annual amount" of benefits which said lands will sustain by keeping said levee or ditch in repair thereafter and such assessment of benefits shall be made in the manner provided by section seventeen (17), seventeen A (17A) and seventeen B (17B) of this Act, but in all other respects the commissioners shall comply with the provisions of this Act, so far as the same may be applicable thereto: *Provided*, that in all cases where the amount of benefits assessed, and the assessments of benefits to repair said levees, ditches or drains, heretofore constructed under any law of this State are insufficient to complete the ditches, drains or levees embraced in the proceedings, the "annual amount of benefits" assessed to keep said levee or ditch in repair after making all necessary repairs and paying other necessary expenses of maintenance for any year, may be applied to complete the ditches, drains or levees embraced in the

proceedings, and to raising, strengthening and protecting said ditches, drains and levees, when required to protect the lands embraced in the drainage and levee districts organized under this Act, from inundation and overflow, and in paying interest on any other notes or bond issued under this Act. [As amended by Act approved and in force June 27, 1913. Laws 1913, p. 265.]

166. Assessment for benefits.] § 18. In making such assessment, the jury shall award and assess the damages and benefits in favor of and against each tract separately, in the proportion in which such tract of land will be damaged or benefited, and in no case shall any tract of land be assessed for benefits in a greater amount than its proportionate share of the estimated cost of the work and expenses of the proceeding, nor in a greater amount than it will be benefited by the proposed work according to the best judgment of the jury, and when directed by the commissioners, or the court impaneling a jury for making any additional assessment to damages and benefits, or benefits, or for the purpose of making assessments in favor of, or against any one or more tracts, as the case may be, in any district, such jury may consider any prior assessment or assessments, against any lands, which are void and unpaid, by reason of some omission, clerical error, mistake, or for want of proper notice to the owner thereof, or on account of other irregularity of proceedings not affecting the merits of such prior assessments, and may include the same or any part thereof with such other assessments. [As amended by Act approved and in force May 29, 1909.]

167. Correction of assessment.] § 19. Repealed by Act approved and in force May 29, 1909. Laws 1909, p. 182.

168. Hearing objections—Corrections.] § 20. Repealed by Act approved and in force May 29, 1909. Laws 1909, p. 182.

169. Proceedings on hearing.] § 21. Repealed by Act approved and in force May 29, 1909. Laws 1909, p. 182.

170. Confirmation and approval.] § 22. Repealed by Act approved and in force May 29, 1909. Laws 1909, p. 182.

171. Appeal bond.] § 23. Repealed by Act approved June 24, 1895. In force July 1, 1895. Laws 1895, p. 166.

172. Trial on appeal.] § 24. Repealed by Act approved June 24, 1895. In force July 1, 1895. Laws 1895, p. 166.

173. **Correction of assessment roll—Confirmation of assessment—Appeal, etc.]** § 25. Repealed by Act approved and in force May 20, 1907. Laws 1907, p. 274.

174. **Payment of assessment of benefits in installments.]** § 26. At the time of confirming such assessments, it shall be competent for the court to order the assessment of benefits to be paid in installments of such amounts, and at such times as will be convenient for the accomplishment of the proposed work or payment of bonds that may be issued; otherwise the whole amount of such assessment shall be payable immediately upon such confirmation. The assessments or installments thereof shall draw interest at the rate of six per cent per annum from the time of confirmation until paid; but if any owner elects, he may pay the whole amount of the assessments, and interest, if any, accrued against his land, before it becomes due; *Provided*, such payment is made before any bonds are issued by the district. Said assessments shall be a lien upon the lands assessed as other taxes, and such lien shall continue until said assessments are paid; and the proceedings of the county court of the county in which said lands are situated, shall be sufficient notice of such lien. When an assessment against any tract of land has been fully paid, it shall be the duty of the treasurer of such district to execute and deliver to the owner of such land, a release in full, which shall discharge such owner from all further liability to pay the same. The release may be recorded in the recorder's office of the county where such lands are situated. [As amended by Act approved June 30, 1885. In force July 1, 1885. Laws 1885, p. 119.

175. **Annual amount of benefits due and payable on the first day of September annually—Borrowing money—Interest.]** § 26½. In case where a levee or ditch has been heretofore built under any law of this State, or may hereafter be built under the provisions of this Act, the annual amount of benefits for keeping the same in repair shall be due and payable on the 1st day of September annually, and shall be a lien on the lands upon which said assessments are made, from and after the confirmation of the report. The court in which such proceedings are had shall require from said commissioners a report of the condition of the levee or ditch at its July term of each year, together with their estimate of the amount necessary to keep the levees or ditch in repair, pay all incidental and necessary expenses for the ensuing year, and the amount necessary to complete the ditches, drains or levees embraced in the proceedings and to raise, strengthen or protect said ditches, drains or levees,

when completed, and in constructing additional ditches, drains or levees when required to protect the lands embraced in the drainage and levee districts organized under this Act, from inundation and overflow; and if the court shall find that a less amount will be required for such ensuing year, than the whole amount of the assessment for the year, then the court shall by an order fix the amount to be paid for such year and only that amount shall be collected, and the excess of such assessment over and above the amount so fixed by said order for said year shall be remitted by law, and shall not thereafter be collected: *Provided*, that the amount to be collected under the order of said court shall not be in the aggregate amount in any one year, to a sum greater than would be produced by a levy of thirty cents per acre on all the lands within said district; except in districts which now have, or may hereafter have, pumping plants, in which districts the annual amount of benefits collected each year shall be a sum sufficient to keep the levees, ditches, drains and other works of said district in repair and to maintain in operation such pumping plant or plants: *Provided, further*, that in all cases where the ditches, drains or levees constructed or repaired under this Act are in danger of being impaired, injured, broken or destroyed by overflow or otherwise, and a part of the annual amount of benefits for protection and keeping the same in repair for the year in which said ditches, drains or levees are so threatened, has been remitted by order of the court as herein provided, or when the annual amount of benefits for protecting and keeping the same in repair for any year is insufficient, the commissioners of drainage and levee districts, organized under this Act, may borrow money on the annual amount of benefits becoming due the first day of September, following the time when said ditches, drains or levees are so threatened, to the extent of two-thirds of said annual amount of benefits and may secure the same by notes or bonds of the drainage and levee districts bearing interest at the rate of six per cent per annum, and not running beyond one year from the date of issue, which notes or bonds shall not be held to make the commissioners personally liable for the money borrowed, but shall constitute a lien upon the annual amount of benefits falling due thereafter for the repayment of the principal and interest thereof: *Provided*, that the report of the commissioners as to the condition of the levee or ditch and their estimate of the amount necessary to keep the levee or ditch in repair, pay all incidental and necessary expenses for the ensuing year, and the amount necessary to complete the ditches, drains or levees, embraced

in the proceedings, and to raise, strengthen or protect said ditches, drains or levees when completed, and in constructing additional ditches, drains or levees when required to protect the lands embraced in the drainage districts, when the proceeding is before a justice of the peace, shall be made on the first Monday in July, in each year. [As amended by Act approved and in force June 27, 1913. Laws 1913, p. 267.

176. Certified copy of assessment delivered to commissioners.] § 27. Immediately after the entry of such confirmation by the court, the clerk shall make out and certify to the commissioners a copy of such assessment roll, and shall also make out and deliver to the commissioners separate copies of such parts thereof, pertaining to the lands situated in the other counties, which shall be recorded in the recorder's office of the respective counties, in which the lands are situated, and shall be notice of the lien thereof to all persons. [As amended by Act approved June 30, 1885. In force July 1, 1885. Laws 1885, p. 121.

177. Commissioners to have power to contract in the corporate name of district.] § 28. Upon the organization of said drainage district, it shall in its corporate name, by its commissioners from thenceforth, have power to contract and be contracted with, sue and be sued, plead and be impleaded, and to do and perform, in the corporate name of said district, all such acts and things as may be necessary for the accomplishment of the purposes of this Act. [As amended by Act approved June 30, 1885. In force July 1, 1885. Laws 1885.

178. Treasurer—Bond.] § 29. The commissioners shall after the confirmation of said assessment roll, and before any collections shall have been made by them, appoint a treasurer, who shall not be one of their number, who shall execute a bond to the people of the State of Illinois for the use of all persons interested, in a sum of not less than twice the amount of assessments that may be in his hands during his term of office, with such sureties as may be approved of by the judge of said court, conditioned for the faithful performance of his duties as treasurer of said drainage district, and that he will safely and faithfully account for all money that by virtue of his said office, shall come to his hands. Which said bond when approved by the court shall be kept and preserved by said commissioners, and suits may be maintained upon the same by them upon any breach of its conditions. [As amended by Act approved June 30, 1885. In force July 1, 1885.

179. Duties—Term of office—Compensation for services.] § 30. It shall be the duty of said treasurer to keep proper books to be furnished him by the commissioners, in which he shall keep an accurate account of all moneys received by him, and of all disbursements of the same; he shall pay out no money, except upon the order of a majority of the commissioners, and shall carefully preserve on file all orders for the payment of money given him by the commissioners, and shall turn over all books, papers, vouchers, moneys, and other property belonging to and in his hands, as such treasurer, to his successor in office. His term of office shall be two years, but he may be at any time removed by the court upon petition of a majority of the commissioners, or for good cause shown. He shall receive, as a compensation for his services, a sum fixed by the commissioners before his appointment. [As amended by Act approved June 30, 1885. In force July 1, 1885. Laws 1885.]

180. Interest on installments.] § 31. In case the assessments for benefits shall be payable in installments, such installments shall draw interest at six per cent per annum, payable annually, from the time of confirmation of the assessment roll until they are paid, and such interest may be collected and enforced as part of the assessment: *Provided*, that in any district where no bonds or interest bearing obligations, at the time of such collection of interest shall have been issued or are outstanding against such installments of assessments upon which said interest shall be collected, the commissioners of such district may, under the direction of the county court, use the money, so collected as interest, for the construction or maintenance of any ditches, drains or levees or other work or any necessary expenses of said district or any indebtedness of said district. [As amended by Act approved May 25, 1907. In force July 1, 1907. Laws 1907, p. 282.]

181. Bond of commissioners.] § 32. The commissioners appointed by virtue of this chapter, shall not collect or receive any money for the purposes herein specified, until they shall have given bond, payable to the people of the State of Illinois, for the use of all persons interested, in a sum not less than twice the amount of the assessment for benefits, payable in any one year, or may come into their hands or under their control during such year, with such security as shall be approved by the judge of the court, conditioned for the faithful application of all moneys that may be received by them as such commissioners, and to make due account thereof to the court whenever required, by law or order of court, which bond shall be filed in the court in which the proceedings are had. Such commissioners are hereby required to renew such bond, on or before the 15th day of September, each year, after the appointment of them or either of them. [As amended by Act approved June 30, 1885. In force July 1, 1885. Laws 1885.]

182. Notice of assessment.] § 33. The commissioners, upon receiving such certified copy of such assessment roll, or the treasurer of such district, shall immediately cause a notice to be published for three weeks, in the manner required in section 3, of this Act, in substance as follows:

Notice is hereby given to all persons interested that the "annual amount of benefits" [*or — per cent of the "annual amount of benefits," as the case may be*] is now due for drainage and levee work for the year A. D. 19— upon land lying within the — drainage and levee district in the county of — and State of Illinois, and that the same must be paid to the undersigned commisioners of said district, [*or to —, treasurer of said district, at his office in — [as the case may be], on or before the — day of —, A. D. 19—, and in default of such payment the several tracts of land upon which said "annual amount of benefits" [or per cent of the "annual amount of benefits," as the case may be] remains unpaid, will be sold according to law, to pay the amount of the same and costs.*

Dated this — day of —, A. D. 19—.

.....Commissioners.
[or Treasurer.]

In case the assessments made are ordered by the county court to be paid in installments, said commissioners or treasurer shall give a like notice, as near as may be, of any installment or installments immediately after such installments or installments become due and payable, and in case of "annual amount of benefits," in drainage and levee districts, as is required by section twenty-six and one-half of this Act, the commissioners shall give notice in a similar manner immediately after the first day of September of each year, stating what part of the "annual amount of benefits" will be collected for that year, which notice may be in substance, as follows:

Notice is hereby given to all persons interested, that an assessment [*or installment of — per cent of the assessment, as the case may be*], is now due for drainage purposes for the year A. D. 19— upon lands lying within the — drainage district, in the county of — and State of Illinois, and the same must be paid to the undersigned commissioners of said drainage district [*or to —, treasurer of said district, at his office, in —, as the case may be*], on or before the — day of —, A. D. 19—, and in default of such payment, the several tracts of land upon which said assesment [*or installment, as the case may be*], remains unpaid, will be sold according to law, to pay the amount of such assessment [*or installment*] and costs.

Dated this — day of —, A. D. 19—.

.....Commisisoners [*or Treasurer*].

Which notice shall be a sufficient demand for any assessment or installment that may be due. [As amended by Act approved June 30, 1885. In force July 1, 1885. Laws 1885, p. 122.

183. Delinquent assessment—Collector.] § 34. If the assessment or any installment or installments thereof, or annual amount of benefits, due upon said lands, shall not be paid on or before the day named in the notice given in section thirty-three (33) of this Act, it shall be the duty of said commissioners, if they have not appointed a treasurer as aforesaid, and if so, then of said treasurer, to make out a certified list of such delinquent lands upon which the assessment, or any installment or annual amount of benefits remains unpaid, and the same shall be by him or them, on or before the tenth day of March next, after the same have become payable, returned to the county collector of the county or counties in which said lands shall lie; and when the same shall lie in different counties a separate return shall be made for each county of the delinquent lands therein; and it shall be the duty of the county collector to whom any such returns have been made, to transfer such returns to the tax books in his hands, setting down therein in proper order the several tracts of the real estate, town lots and blocks so returned, and setting opposite to the respective tracts of real estate, lots and blocks, in proper columns prepared for that purpose, the amount of assessment, installment or installments or annual amount of benefits against each tract of real estate, lots and blocks, and the like proceedings shall be had, and with the like force and effect in the collection of such delinquent assessment or assessments, or installment or annual amount of benefits unpaid, with interest, and the sale of said real estate, lots, blocks and lands for non-payment thereof, as in ordinary collections of State and county taxes by county collectors, and of sale of real estate by them for such non-payment and of redemption from such sales. Nothing in this Act contained shall be construed to affect or impair any assessment or return of lands delinquent for assessment heretofore made under any law of this State. [As amended by Act approved June 30, 1885. In force July 1, 1885. Laws 1885, p. 123.]

184. Act to be liberally construed.] § 34½. This act shall be liberally construed to promote the ditching, drainage, and reclamation of wet or overflowed lands; and collection of assessments shall not be defeated by reason of any omission, imperfection or defect in the organization of any district, or in any proceedings occurring prior to the judgment of the court, confirming the assessments of benefits and damages; but said judgment shall be conclusive that all prior proceedings were regular and according to law. [Added by Act approved June 30, 1885. In force July 1, 1885. Laws 1885, p. 123.]

185. Payment before sale.] § 35. Notwithstanding the returns of such delinquent list, the said commissioners, or their treasurer, shall be authorized to receive payment of any such delinquent assessments and costs. and may give receipts for the same but shall keep a memorandum of the same, and on or before the day of sale fixed by said county collector for the sale of such lands, shall present said memorandum, or list, to said county collector or collectors, for the purpose of having the same checked or marked paid on the delinquent list in his hands, and all amounts collected by the said county collector, by sales or otherwise, after deduction of his fees, shall be paid to the commissioners on demand. [As amended by Act approved June 30, 1885. In force July 1, 1885. Laws 1885, p. 123.

186. Letting contracts—Commissioners to Advertise for bids.] § 36. The commissioners, when qualified in pursuance of this Act, may do any and all acts that may be necessary in and about the surveying, laying, constructing, repairing, altering, enlarging, cleaning, protecting and maintaining any drain, ditch, levee or other work for which they have been appointed, including all necessary embankments, protections, dams and side drains, clearing out and removing of obstructions from natural or artificial channels or streams within or beyond the limits of the drainage district, procuring or purchasing riparian rights by agreement with the owners thereof, and may use any money in their hands arising from assessments for that purpose: *Provided*, that in all cases where the work to be done is the construction of the principal work, the cost of which will exceed five hundred dollars, the same shall be let to the lowest responsible bidder, and the said commissioners shall advertise for sealed bids by notice published in some newspaper issued in the county in which the petition is filed, and if there be no newspaper issued or published in said county, then in the next nearest newspaper; which said notice shall particularly set out the time and place, when and where, the sealed bids will be opened; the kind of work to be let, and the terms of payment. Said commissioners may continue the letting from time to time, if in their judgment the same shall be necessary, and may reserve the right to reject any and all bids. And said commissioners shall not, during their term of office, be interested, directly or indirectly, in any contract for the construction of any ditch, drain, or levee, in such drainage district, nor in the wages of or supplies to men or teams employed on any such work in said district: *Provided, further*, that no levee, drain, ditch, or other

work authorized to be constructed or made under this Act shall be constructed or made in such a manner as to destroy or impair the usefulness or prevent the public use of any bay or harbor, or body of water used as a harbor, connected with any navigable stream. [As amended by Act approved June 30, 1885. In force July 1, 1885.]

187. Suits, money to be used under direction of court—Additional assessments.] § 37. Said commissioners may use money arising from the collection of assessments or coming into their hands, as such commissioners, for the purpose of compromising suits and controversies arising under this Act, and in the employment of all necessary agents and attorneys, in organizing said districts, and for conducting other proceedings, in law or in equity, for the same, and for the purpose of constructing or repairing or maintaining any ditch, ditches, drains, levee or levees within said district or outside of said district, necessary to the protection of the lands and complete drainage of the same within said district: *Provided*, that the commissioners shall use such money under the direction or approval of the court; and assessments from time to time may be levied on the land within any district when it shall appear to the court that the previous assessment or assessments have been expended or are inadequate to complete such work, or are necessary for maintenance or repair, or when it shall become necessary for the construction of one or more pumping plants, or other additional work, or the completion of any work already commenced within any drainage district to insure the protection or drainage of the lands in said district, under the direction and order of the court, or to pay obligations incurred for the current expenses of said district or in the keeping in repair and protection of the work of such district, on a petition of a majority of the land owners within said district who are of lawful age and represent at least one-third in area of such lands or on a petition of one-third of such adult land owners who represent a majority [major portion] in area of such lands, or on the petition of the commissioners accompanied by an itemized statement of accounts made by the commissioners under oath, showing the moneys received by the district and the manner in which they have been expended, together with the plats and profiles of such additional work and estimated cost of the same; two weeks' previous notice of the time set for the hearing of said petition in the manner required by section three (3) of this Act having been given. Upon the hearing of such petition the court may grant the prayer of the same, and cause the jury to be impaneled to make said assessment, as well as an assessment for annual amount of benefits for maintaining and operating such pumping plant or plants and for keeping such additional work in repair, with like proceedings and notice as near as may be, as in

cases of original assessments of damages and benefits under this Act, and such additional assessment or assessments, when made, shall have the same force and effect and be collected in the same manner as original assessments. [As amended by Act approved and in force June 27, 1913. Laws 1913, p. 267.]

188. Commissioners may borrow money.] § 38. The commissioners may borrow money not exceeding ninety per cent of the amount of assessment unpaid at the time of borrowing, for the construction of any work which they shall be authorized to construct, or for the payment of any indebtedness they may have lawfully incurred under the provisions of this Act, or to the Act to which this is an amendment, and may secure the same by notes or bonds, bearing interest at the rate of not exceeding six per cent per annum, and not running beyond one year after the last assessment or installment of assessment on account of which the money is borrowed shall fall due, which notes or bonds shall not be held to make the commissioners personally liable for money borrowed, but shall constitute a lien upon the assessment for the re-payment of the principal and interest thereof; or such bonds may be issued to the amount of ninety per cent of any one installment, and constitute a lien on such installment alone, falling due within one year after such installment becomes due, such installment shall be particularly designated in such bonds: *Provided*, where the payment of any installment or installments of any assessment has been deferred in pursuance of section twenty-six of this Act, and the court shall find on petition of the commissioners that it will be for the interests of the district that money should be borrowed to an amount exceeding ninety per cent of such installment or installments, the court on due hearing, may by order entered of record, authorize the borrowing of money to such an amount in excess of ninety per cent of such installment or installments as the court may find to be advisable. And the county court may, on the petition of the commissioners, authorize them to refund any lawful indebtedness of the district authorized by and created under this Act, or the Act to which this is an amendment, by taking up and cancelling all outstanding notes and bonds of such district, issued under this Act or the Act to which this Act is an amendment, as fast as they become due, or before they shall become due, if the holders thereof will surrender the same, and to issue in lieu thereof, new notes or bonds of such district, payable on such longer time as the commissioners shall think proper, not to exceed in the aggregate the amount of all notes and bonds of such district then outstanding, and the unpaid accrued interest thereon, and the court shall have power, on the petition of the commissioners to order that the collection of

any one or more, or all of the installments of the assessments for benefits on account of which the money was borrowed, be postponed to such time as the court may consider proper and reasonable, when the same shall become due and payable, and such installment or installments, so postponed, shall bear interest until they shall become due, at the rate of eight (8) per cent per annum, unless otherwise ordered by the court, but after they become due they shall bear interest at the rate of eight per cent per annum: *Provided*, that such bonds and notes shall be made due and payable within one year after the last installment of the assessment postponed, as aforesaid, shall become due. The court shall have the power to make all needful orders to carry into effect the provisions of this act, and no irregularity in the proceedings; either before or after the organization of the district or in the assessment of benefits, or in the extension of time for the payment of the same, shall in any manner affect the validity of the bonds or coupons issued in pursuance of this Act. [As amended by Act approved June 4, 1889. In force July 1, 1889. Laws 1889, p. 121.]

189. **Payment of damages.] § 39.** All damages over and above benefits to any tract of land, shall be payable out of the amount assessed against other lands assessed for benefits, and shall be paid or tendered to the owners thereof before the commissioners shall be authorized to enter upon his land for the construction of any work thereon. In case the owner is unknown, or there shall be a contest in regard to the ownership of the land, or the commissioners cannot for any reason safely pay the same to the owner, they may deposit the same with the clerk of the court and the court may order the payment thereof to such party as shall appear to be entitled to the same. The damages assessed under this act in favor of any tract or tracts of land in such district, shall be in full compensation to the owner thereof, their heirs or assigns, for the perpetual right of way, as located by the commissioners over such lands, of any ditch or ditches, open or covered, levee or other work including the right of the commissioners, their employes or contractors with teams, tools or machinery to enter upon such lands, and construct such work, and if necessary, to repair or enlarge the same; and any person who shall wilfully prohibit or prevent any of the aforesaid persons from entering such lands for the purpose aforesaid, shall be fined in a sum not to exceed twenty-five dollars (\$25) per day, for such hindrance, to be collected as other fines. [As amended by Act approved June 30, 1885. In force July 1, 1885. Laws 1885, p. 108.]

190. Removal of commissioners—Vacancies.] § 40. The court may, for good cause, at any time, remove any commissioner appointed by it, and appoint another in his place, and may fill all vacancies caused by death, resignation, removal or otherwise. [As amended by Act approved June 30, 1885. In force July 1, 1885. Laws 1885, p. 108.]

191. Commissioners report to court.] § 41. The commissioners shall, as often as once in each year after their appointment, and as much oftener as the court shall require, make a report to the court, showing the amount of money by them collected and the manner in which the same has been expended; and upon the filing of such report the court shall set a time, not exceeding three weeks from such filing, when such report shall be heard; and the commissioners shall give at least ten days' notice thereof, by posting written or printed notices, in not less than four of the most public places in the district, and one at the door of the court house of the county in which said district was organized. Upon the time fixed the court shall hear said report and all objections thereto, or may continue such hearing to another time fixed; and upon hearing such report, may require evidence, to be produced by the commissioners, in support thereof, and if found correct, may approve such report. Upon the failure of the commissioners, or either to them, to make such report, to the satisfaction of the court, as required by this section, such commissioner or commissioners on the application of any person interested, or the court without such application, shall remove such commissioner or commissioners from office. [As amended by Act approved June 30, 1885. In force July 1, 1885. Laws 1885, p. 108.]

192. Pay of commissioners and clerk.] § 42. The commissioners shall hold all their meetings for the transaction of business at any place in the county or counties in which said district is located, and shall receive for their services the sum of three dollars per day, and their necessary traveling expenses for each day they shall be actually engaged in the business of their office: *Provided*, that in districts having an area of more than seventy-five thousand acres the commissioners shall receive four dollars per day for each day actually engaged in their official duties, together with their necessary traveling expenses. The commissioners shall present an itemized account, under oath, to the county court, of the amounts due them respectively, which amounts shall be audited at least once a year by said

county court, and certified by said court to their treasurer, to be paid by him on said certificate. But such itemized account or accounts shall be subject to the approval of the court as provided by section forty-one (41) of this Act. The clerk of the county court shall receive for his services hereunder, such fees as are allowed by law for similar service in said county court. [As amended by Act approved and in force May 29, 1909. Laws 1909, p. 182.]

193. **Petition to be relieved of assessment.**]. § 43. Whenever a petition shall be presented to said court by the owner of any tract of land within said district, setting forth that the same, or any part thereof, has been erroneously assessed for benefits, for the reason that the same is not subject to overflow, or has never been overflowed by the highest water known, or that the assessment is too high, and that no bonds have been issued by the district which are a lien on said assessments, and praying that the said lands, in whole or in part, may be released from the assessment made or to be made in the future, the court may, after ten days' notice of the filing of such petition being given to the commissioners, at any term of court, probate or common law, proceed to hear said application, granting such continuance as may be right and proper; and if the court shall find, upon issue joined, that any part of the land named in said petition is not subject to overflow, or has never been overflowed by the highest water known from the stream against which the levee in question has been constructed, or that the assessment is too high, may, by order to be entered of record, unless it appears to the court that the assessment on the whole tract is no more than the proportion that the land subject to overflow (if said land or any part thereof is subject to overflow) in said tract is benefited, and should pay toward constructing and maintaining the levee, or that the assessment on the tract is no more than the proportion of sanitary benefits received by the whole tract, and no more than the whole tract should pay for sanitary benefits toward constructing and maintaining the levee, and [amend] the assessment roll returned by the jury in conformity to the facts found, and such part shall thereafter be discharged from all other assessments, and the clerk shall immediately cause a copy of such order to be delivered to the commissioners that the copy of the assessment roll in their hands may be made to conform to such order. *Provided*, that a petition for the correction of any assessments heretofore made, shall be filed within a year after this Act shall take effect, and as to assessments

thereafter made, such petition shall be filed within one year after the confirmation of the assessment. *And provided*, that where such petition shall be for the correction of an assessment heretofore made, the proceedings had thereon, shall be at the cost of the petitioner. *And provided further*, that this section shall not apply to districts organized for the purpose of establishing a combined system of drainage independent of levees. [As amended by Act approved June 30, 1885. In force July 1, 1885. Laws 1885.]

194. Commissioners may petition for abandonment before contract let.] § 44. At any time before the contract shall have been made for the construction of any drain, ditch, levee or other work provided for in the report of the commissioners, or the order of the court made in pursuance thereof, which is sought to be abandoned, as hereinafter provided, upon petition of the majority of the adult land owners of the district representing one-third of its area, the county court may, if upon due inquiry it shall be satisfied that justice towards all the land owners of said district requires it, direct the commissioners to abandon any drain, ditch, levee or other work, or any part thereof, mentioned in such report or order. Upon the filing of any such petition it shall be set down for hearing by the court, and notices of the filing of such petition, and of the general nature of the relief sought by the petitioners, shall be given by the clerk of the court in which such petition is filed for the length of time and in the manner (so far as applicable to the nature of the proceedings) required by section three (3) of the Act to which this is an amendment. The court may, for good cause, after the proof of notice as aforesaid, continue the hearing of such application from time to time, and any person or persons interested may appear and resist such application; and the court, after a full hearing of all material facts pertaining thereto may make such order in the premises as shall appear to the court to be just. If the court shall determine

that any portion of the proposed work shall be abandoned, it shall ascertain to what extent the cost of such proposed work shall be diminished thereby; and if the assessments for benefits shall have been made, such portions of said assessment shall be abated in such uniform proportion as such change of plans shall render unnecessary for the completion of such works according to such modified or altered plans and if any lands shall have been assessed by the commissioners which, on account of such change of plans, will be wholly deprived of the benefits contemplated in the original plans, the court shall order that the entire assessments against such lands be abated. If such order shall be made after the assessments shall have been collected, the court shall order such proportion of said assessments as may be abated to be refunded to the person who may have paid the same or their lawful representatives, and for non-compliance with such order the commissioners and the treasurer of said district respectively and their sureties shall be liable upon their respective bonds. And the court may make any other or further order in pursuance of the objects of this section of this Act, as justice to all persons whose interests may be affected by it may require. [As amended by Act approved and in force June 27, 1913. Laws 1913, p. 268.

195. **Entry upon lands.] § 45.** The commissioners from the time of their appointment may go upon the lands lying within said district for the purpose of examining the same, and making plans, plats and surveys, and after the organization of said district, and payment or tender of compensation allowed, may go upon said lands, with their servants, teams, tools, instruments or other equipments, for the purpose of constructing such proposed work, and may forever thereafter enter upon said lands as aforesaid, for the purpose of maintaining or repairing such proposed work, doing no more damage than the necessity of the

occasion may require ; and any person or persons, who shall willfully prevent or prohibit any of such persons from entering such lands for the purposes aforesaid, shall be fined any sums not exceeding \$25 per day for each day's hindrance, to be recovered in an action of debt in favor of such drainage district before any justice of the peace, or court of competent jurisdiction, which sum shall be paid into the treasury for the use of said district. [As amended by Act approved June 30, 1885. In force July 1, 1885.

196. **Drainage and levee districts may be taken, etc.] §46** Drainage and levee districts heretofore organized under this Act, and drainage and levee districts hereafter organized under said Act, when it shall become necessary to construct additional drains, ditches, or levees in order to protect the lands embraced in said drainage and levee districts from inundation and overflow, or repair, enlarge, raise, strengthen or protect drains, ditches, or levees already constructed or in process of construction, may by their agents and employes, enter upon and take possession of such lands as may be necessary to construct such additional drains, ditches or levees, or repair, enlarge, raise, strengthen or protect drains, ditches or levees already constructed or in process of construction, paying, if the owners of such lands and the commissioners of said drainage and levee districts can agree, the value of such lands taken, and the amount of damages occasioned thereby, to any such lands or its appurtenances, and if such owners and commissioners of said drainage and levee districts cannot agree, then the value of such land and the damages occasioned thereto may be ascertained, determined and paid in the manner that may now or hereafter be provided by any law of eminent domain. And the commissioners of said drainage and levee districts, when necessary to protect the drains, ditches, or levees thereof, may put in such works in and along rivers, creeks or lakes, as will protect the banks of the same from caving, and they may go beyond the bounds of the said district for that purpose. [As amended by Act approved June 30, 1885. In force July 1, 1885.

197. **Assessment book—Drainage record.] § 47.** When an assessment has been made as provided in the preceding sections, and annually hereafter, it shall be the duty of the commissioners to provide suitable books, with proper headings and columns, in which shall be inserted, according to township and range, the several tracts of lands against which assessments are to be carried out, the names of the

owners, if known, the number of acres to be assessed, the total amounts of assessments, and for what year, and a column for payments, and if any assessments shall remain due and unpaid after the time mentioned in the notices to be given as provided in section 33 of this Act, it shall be the duty of said commissioners or treasurer, to make a list of the lands upon which such assessment has not been paid, and deliver such list or lists to the county collector of each county in which such lands may respectively lie, to be by him collected as heretofore provided. And the commissioners shall also, at the expense of the district, keep a well-bound book, to be known as the "drainage record," which shall at all times be open for inspection to parties interested, in which one of their number, as secretary, shall record the proceedings of every meeting thereof. They shall hold such meetings on the first Tuesdays of March, May, July and September of each year, or oftener, if necessary. They shall make a brief memoranda in such record, of all their transactions concerning the district. If bonds have been issued, and sold, as a lien on any particular installment of assessments, or a general lien on all; or contracts have been let on any section or division of work; or orders issued on the treasurer; or materials or tools purchased; or warrants for service of a commissioner issued by the clerk; or sums paid, by order, for work done; all such proceedings and any other particular matter or transaction of such commissioners shall be carefully entered upon such record, and the dates, amounts, and proper descriptions of such doings shall at all times be observed in making such memoranda. Said commissioners shall also take and preserve proper vouchers for all orders given by them on the treasurer. [As amended by Act approved June 30, 1885. In force July 1, 1885. Laws 1885, p. 108.]

198. Proceedings where costs do not exceed \$2,000.] § 48. When the costs of any proposed drain, ditch, levee or other work authorized by this Act to be done, will not exceed the sum of two thousand dollars, the petition may, if the petitioners shall so elect, be filed with a justice of the peace in the county where the land to be affected or the major part thereof is situated, and if the drainage district is situated in two or more townships or precincts, the petition shall be filed with the justice of the peace in the township or precinct where a major part thereof is situated; and all the proceedings authorized by this Act to be had in the county court, in cases where the petition is filed in such court, may be had before such justice of the peace, the justice of the peace performing all the services and duties required of the clerk of the county court by this Act in proceedings commenced

in that court; and the assessment of damages and benefits shall be conducted before such justice in the same manner, as near as may be, as cases commenced by petition before such county court. In proceedings before a justice of the peace under this Act, the petition, report of commissioners, assessment roll and all other papers may be filed and a hearing had thereon at any time, notice having first been given for the length of time and in the manner required by this Act. *Provided* that such justice of the peace shall not have jurisdiction to hear objections to the assessment roll confirmed by the jury; but immediately after such confirmation he shall file the same in his office and make a brief memorandum of such filing on his docket, and he or the commissioners shall, within ten days from such confirmation, present and file said assessment roll for confirmation in the office of the clerk of the county court of the county in which the greater part of the lands in such district are situated; and like proceedings shall be had with the same by the county court as in cases of assessments made by a jury, in districts organized in said court. [As amended by Act approved June 30, 1885. In force July 1, 1885. Laws 1885, p. 108.]

199. Proceedings before justice.] § 49. When the proceedings for organization shall be had before a justice of the peace, the justice of the peace shall appoint three commissioners, residents of the township or precinct in which the district is situated, to lay out and construct such work, and perform the duties required of commissioners appointed under this Act; and such commissioners, appointed as aforesaid as provided in this Act; shall have all the power and authority and may perform all Acts, and shall discharge all the duties imposed upon or required of commissioners appointed by the county courts, as herein provided; and the said commissioners so appointed by the justice of the peace as aforesaid, as provided by this Act, shall receive for their services the same compensation as herein provided to be paid to commissioners appointed by the county court, and before entering upon their duties shall be duly sworn as required by Section 6 of this Act. [As amended by Act approved June 30, 1885. In force July 1, 1885. Laws 1885, p. 108.]

200. Refusal of commissioner to perform duty.] § 50. If any commissioner shall refuse or neglect to discharge any of the duties imposed upon him, by virtue of this Act, he shall, for every such refusal or neglect, be liable to the party aggrieved, for all damages sustained by him, and upon conviction, may be fined in any sum not exceeding one hundred dollars (\$100), and

be removed from his office. [As amended by Act approved June 30, 1885. In force July 1, 1885. Laws 1885, p. 108.]

201. No second tax—Upper ditch benefited by lower ditch.] § 51. When a ditch or drain of a district has been located under the provisions of this Act, of sufficient capacity to carry off the water that flows into it, and also to properly drain the land taxed for the construction of the same, such land shall not again be taxed or assessed for the purpose of improving any lands of any drainage district lying above the lands so drained and assessed.

202, § 52—203, §53—204, § 54. Repealed, saving rights that have heretofore accrued thereunder. Laws 1913, p. 260.

205. Corporate authorities assessed for benefits and damages—Proceedings.] § 55. When a ditch, drain or levee, or other work established or repaired, or a combined system of drainage is located by the report of the commissioners, confirmed by the court or justice of the peace under this Act, drains or levees or proposes to drain or levee, either in whole or in part, any public or corporate road or railroad, or the streets and alleys of any municipal corporation, so as to benefit any of such roads, so that the roadbed or traveled tract or other property of such road will be improved by the construction of such ditch, drain or levee, the commissioners shall apportion to the county, State, or free turnpike road, to the township, if a township road, to the company, if a corporate road or railroad, or to the municipal corporation in the case of streets and alleys, such proportion of the cost and expenses thereof as to private individuals, and shall include such apportionment in said "commissioners' roll of assessments of benefits and damages," and give to the corporate authorities so benefited, or, in case they are damaged, to the said corporate authorities so damaged, or benefited and damaged, as the case may be, the same notice and at the same time as shall be given to private individuals; and the matter of the amount of such assessments of benefits and damages if not agreed upon, shall be submitted to a trial by the same jury in the same manner as the

jury shall view and examine such road, railroad, streets and alleys, and shall proceed to assess the damages and benefits in like manner as to the lands of individuals, and no other or different notice shall be required to be given: *Provided*, that when the commissioners and the corporate authorities of the county, State or free turnpike, township road, corporate road, or railroad, or municipal corporation, or any of them agree as to the amount that they or any of them should contribute, that the amount so agreed on shall be reported to the said jury when they meet to correct their assessment roll, and the amount so agreed upon shall be incorporated into said assessment roll when amended by said jury or commissioners: *And, provided, further*, that the amount so assessed against any railroad company or private corporation shall, upon the confirmation of the assessment roll by the county court, become a lien upon the real property of such railroad company or private corporation, and have the same force and effect as a judgment at law in favor of such district against such railroad company or private corporation, and execution may issue thereon as upon judgments in courts of record in other cases, and shall have a like lien upon personal estate. In case such assessment is made against any township in this State the commissioners of highways of such town shall cause the same to be levied and paid to said district in the manner provided by sections 13, 14, 15, and 16 of an Act entitled, "An Act in regard to roads and bridges in counties under township organization, and to repeal an Act and parts of Acts therein named," approved June 23, 1883, or in such manner as may now or hereafter be provided by law: *And, provided, further*, that the sum assessed against either of said corporations shall not include the expenses of constructing, erecting or repairing any bridge, embankment or grade, culvert or other work of the roads of such corporations, crossing any ditch or drain, constructed on the line of any natural depression, channel or water-course; but the corporate authorities of such road or railroad are hereby required, at their own expense, to construct such bridge, culvert or other work, or to replace any bridge or culvert temporarily removed by the commissioners in doing the work of such district. Full power and authority is hereby given the drainage

commissioners to remove such bridges or culverts for the purposes aforesaid, if they, in their judgment find it necessary. [As amended by Act approved and in force May 29, 1909. Laws 1909, p. 182.]

206. Commissioners to give notice to railroad company to construct or enlarge bridge or culvert, etc.] § 56. When any ditch or drain or other work of enlarging any channel or watercourse is located by the commissioners on the line of any natural depression or watercourse, crossing the road of any railroad company where no bridge or culvert or opening of sufficient capacity to allow the natural flow of water of such ditch or watercourse, is constructed, it shall be the duty of the commissioners to give notice to such railroad company to construct or enlarge such bridge or culvert or opening in the grade of such road, for such ditch or ditches or other work, of the dimensions named in such notice, within twenty days from the service thereof; and any railroad company neglecting, failing, or refusing so to do, shall be liable to any owner of land in such district, for all damages to such land sustained by such neglect or refusal; and shall be liable to such district in the sum of twenty-five dollars (\$25) for each day such company shall have neglected or refused to construct such work, after the time fixed in such notice for constructing the same shall have expired, which damages or penalty may be recovered before a justice of the peace, if within his jurisdiction, or before any court of competent jurisdiction. [Added by Act approved June 30, 1885. In force July 1, 1885. Laws 1885, p. 108.]

207. Meaning of the word ditch—What Act includes.] § 57. The word ditch when used in this Act, shall be held to include any drain or watercourse, and the petition for any drainage district shall be held to mean and include any side, lateral, spur or branch ditch or drain, whether open, covered or tiled, or any natural watercourse into which such drains, or ditches may enter for the purpose of outlet, whether such watercourse is situated in or outside of the district. And to secure complete drainage of the lands within any drainage district, the commissioners are hereby vested with full power to widen, straighten, deepen or

enlarge any such watercourse, or remove driftwood or rubbish therefrom, whether such watercourse is situated in, outside of or below any drainage district; and when it is necessary straighten such natural watercourse by cutting of new channel upon other lands, the value of such lands to be occupied by such new channel, and damages if any, made by such work, may be ascertained and paid in the manner that is now or may hereafter be provided by any law providing for the exercise of the right of eminent domain in force in this State. The expenses of the work provided for in this section shall be paid from moneys arising from assessments upon lands within the district. This section shall apply to any and all drainage districts that have been heretofore or may hereafter be organized under this Act. [As amended by Act approved May 14, 1903. In force July 1, 1903. Laws 1903, p. 163.]

208. Assessing lands benefited outside of district—Proceedings.] § 58. Any land lying outside of the drainage district as organized, the owner or owners of which shall thereafter make connection with the main ditch, or drain, or with any ditch, or drain within the district as organized, or whose lands are or will be benefited by the work of such district, shall be deemed to have made voluntary application to be included in such drainage district; and thereupon the commissioners shall make complaint in writing, setting forth a description of such land or lands, benefited, and amount of benefits; the name of the owner or owners thereof, also, a description of the drain or ditch making connection with the ditches of such district, as near as may be, and file said complaint in the county court or before a justice of the peace. The court or justice of the peace shall fix a day, not less than fifteen days from such filing, when he will hear such complaint, and thereupon the commissioners shall give ten days' notice thereof in writing; said notice shall embrace a copy of such complaint, and service thereof shall be by reading or delivering a copy thereof to such owner or owners, or by either publishing a copy of said petition or posting copies thereof within the territory sought to be annexed in the same manner as provided by section 3 of said act; and affidavit of such service shall be evidence thereof. At

the time fixed, or at a time continued from such time fixed, the court or justice of the peace, shall hear said cause, and if the complaint is before a justice of the peace and judgment is rendered in favor of said district, he shall record a copy of said complaint, and service of notice thereof together with his judgment thereon upon his docket, and if the district was organized before the county court, he shall transmit a certified copy of such complaint and judgment to the clerk of such court who shall file and record the same, or if the complaint was heard by the county court, in which such district was organized and judgment given in favor of said district, a record of such judgment giving a description of such lands annexed shall be made, and such lands described in the complaint in either case, shall be deemed a part of such district and shall be assessed as other lands therein. The assessments of benefits against such lands so added to said district, may be made at any time the commissioners may deem proper; and the assessment roll thereof shall be filed and recorded and proceedings thereon had as in other cases; or such lands may be assessed when all lands throughout the district are assessed. [As amended by Act approved and in force May 20, 1907. Laws 1907, p. 274.]

209. Constructing additional ditches—Proceedings.] § 59. If, after an assessment of lands throughout the district has been made for the purpose of constructing drains or ditches, or enlarging or repairing the main drains or ditches of said district, according to the profiles, plans and specifications of the commissioners, as reported and confirmed, there remain lands in particular localities in said district, which are in need of more minute and complete drainage, and it shall appear to the commissioners that, in their judgment, additional ditches, drains, outlets, levees, pumping plants or other work are needed, in order to afford more complete drainage, they may prepare a special report as hereinafter provided and file the same and organize a sub-district in the manner hereinafter set forth without the necessity of a petition of the land owners therefor: *Provided*, that no sub-district organized upon the petition or report of the commissioners shall include territory embraced within the corporate limits of any city, village or incorporated town, unless, however, the proposition whether said territory shall be so embraced

shall have been submitted to the legal voters residing within said territory and said proposition shall have received favorably a majority of the votes cast at an election called for that purpose by the commissioners and held within said territory, and in all cases where, upon written application to the commissioners, signed by a majority in number of the adult land owners in such locality owning in the aggregate more than one-third of the land affected, or by the adult land owners of a major part of the land in such locality who constitute one-third or more of the owners of the land affected, it shall appear that additional ditches, drains, outlets, levees, pumping plants or other work are necessary in order to afford more complete drainage to such locality, it shall be the duty of such commissioners to examine such lands, and lay off and make plans, profiles and specifications of such additional work, and an estimate of the cost of the same and make a special report thereof, which special report, whether filed on petition of the land owners or not, shall describe all of the lands which will be either benefited or damaged by such additional work, together with the names of the owners, when known; and said commissioners may use any money in their hands not otherwise appropriated to pay the necessary expenses of preparing said special report: *Provided*, said sum to be expended shall in no case exceed the sum of \$500.00; the special report when prepared by the commissioners shall be filed with the clerk of the county court, and the commissioners shall give to all persons whose lands will be either benefited or damaged, whether they signed an application for additional work or not, three weeks' notice of the filing and hearing of such report in the manner required by section three (3) of this Act; said notice shall state that the commissioners will appear before the county court at a day mentioned in said notice, and ask said court for a confirmation of such special report; and upon said hearing the court shall pass upon said report and may permit the same to be amended, and if said report is confirmed and approved by the court, a special assessment of benefits and damages shall be made upon all the lands benefited or damaged by the proposed work, in the manner provided for the making of the original assessments of the benefits and damages by this Act; and like proceedings shall be had therein as in other cases of assessment of benefits and damages provided by this Act; and the said commissioners may cause to be levied

an assessment of annual benefits in said sub-districts in the same manner as annual benefits are levied in original districts under this Act: *Provided*, that if said sub-district does not own or operate a pumping plant, such annual benefits shall not in any one year amount to more in the aggregate than a sum which would be produced by a levy of thirty cents per acre on all the lands within said sub-district.

The affidavit of any of the commissioners, or any other creditable person, of the posting and mailing thereof affixed to a copy of said notice shall be sufficient evidence of the posting and mailing of said notices, and the certificate of the publisher of the newspaper in which said notice was published, shall be sufficient evidence of the publication of such notice.

Upon confirmation of said special report by the court, it shall be the duty of the court to declare all the lands found to be affected by the work proposed by said special report, to be organized into a sub-district, and all assessments received and collected in such sub-district, for the work of such sub-districts, shall be kept as a separate fund belonging to such sub-district, and said commissioners shall have the power if necessary to issue bonds against any assessment or assessments in said sub-district in the same manner as bonds are issued in original districts.

The commissioners of the principal district shall be *ex officio* commissioners of the sub-district.

Any lands lying outside of any sub-district as organized, the owner or owners of which shall thereafter make connections with any ditch or drain within any sub-district, or whose lands are or will be benefited by the work of such sub-district, shall be deemed to have made voluntary application to be included in such sub-district, and thereupon the commissioners shall make complaint as provided in section fifty-eight of this Act as to lands lying outside of a drainage district as organized, and like proceedings shall be had thereon as in cases of complaints made under said section fifty-eight. [As amended by Act approved and in force June 27, 1913. Laws 1913, p. 269.]

210. **Repeal.] Omitted.**

211. **Emergency.] Omitted.**

212. **When assessment invalid as to one or more tracts—Proceedings.]** § 60. Whenever it shall appear to the court that any proceedings for the organization of a drainage district, or any assessment of damages or benefits under this Act, or any law of this State is invalid as to one or more tracts of land jointly or severally owned, situated in such district or any tract of land has been omitted from such assessment by reason of clerical error or other mistake, or want of the proper notice or notices, as required by the Act to which this Act is an amendment, such want of notice shall not invalidate such organization, neither shall such assessment of benefits be lost to the district; but the commissioners of such district may file a petition against the owner or owners, his heirs or assigns, of such lands irregularly assessed or omitted in said court, describing in such petition the boundaries and name of the district, the land owned by defendants, the amount of damages and benefits assessed in favor of and against such lands, reciting such irregularity of notice and omissions, and praying the defects and omissions may be cured, and such assessments be made valid, and that the lands omitted, if any, may be assessed, or made a part of the district, as the case may be. [Added by Act approved June 30, 1885. In force July 1, 1885. Laws 1885, p. 108.]

213. **Proceedings to make assessments valid.]** § 61. Upon the filing of such petition, process of summons shall be issued thereon, made returnable to said court, and served ten days before the next succeeding term thereof, or continued, as the case may be, for service, in the manner now provided by law for issuing and service of summons in chancery cases; and in case the defendants, or either of them, are non-residents of this State a like proceedings and practice shall be had, and notice by publication shall be given as provided by such law in chancery cases. In case any defendants are minors, the court shall appoint a guardian *ad litem* who shall appear and defend in behalf of such minors; and every defendant served or notified as required in this Act shall by his answer show cause why the prayer of the petition should not be granted; and in default of such answer the court shall give judgment according to the prayer of such petition. In case the defendants file such answer, the court, on the trial of said cause, shall hear oral or written evidence, and give judgment therein, as in cases of equity, and may grant the

prayer of such petition: *Provided*, in case the petition asks to make valid an assessment of damages or benefits, or to make assessments in favor of or against lands omitted, the defendant, if he demands it, shall be entitled to a jury to view the premises, and make assessments *de novo*, or make assessments omitted, as to the lands named in the petition, and the jury shall be sworn and shall proceed in the manner provided by this Act, as near as may be, for making assessments and make a special assessment roll as to the lands named in the petition, and file the same in the county court within the time now provided by this Act for such return and filing, and such further proceedings and confirmation shall be had therein, as provided in this Act, in cases of other assessments; and the defendants may appeal from the confirmation of the jury or judgment of the county court, upon the same conditions provided by this Act for appeals from judgment in other cases of assessment of damages and benefits. [Added by Act approved June 30, 1885. In force July 1, 1885. Laws 1885, p. 108.]

214. Appointment of commissioners.] § 62. On the first Monday of September, in each district heretofore organized under this Act, and on the first Monday of September after any district may hereafter be organized under this Act, the county court shall appoint three commissioners for each respective district, one to serve one year, one two years and one for three years from the date of the first appointment under this section, and on the first Monday of September of each year thereafter the said court shall appoint one commissioner of said district who shall hold his office for three years, and until his successor is chosen and qualified, but in all districts now organized or hereafter to be organized for the construction, reparation and protection of drains, ditches and levees for agricultural purposes, the court shall appoint as commissioner or commissioners, only such persons as shall be petitioned for by adult land owners representing a majority of the acreage embraced in the district: *Provided*, such petition is filed in said court on or before the first day of September aforesaid. In case such petition is not filed, as aforesaid, then said court, within ten days after the said first Monday in September, shall appoint some suitable person or persons as commissioner or commissioners of said district without such petition: *Provided*, that at any time after the drains, ditches

or levees, for the construction of which the dsitric was organized, have been finally completed, the court may, on petition therefor, as aforesaid, dispense with two commissioners, and thereafter appoint for such district, in accordance with this Act, but one commissioner, such one commissioner to hold office for the term of three years from his appointment, and until his successor is chosen and qualified, and he shall perform the duties and exercise the powers thereof vested and imposed upon the three commissioners of such district. Whenever, upon the petition of one or more land owners of said district, it shall appear to the court that additional work is needed in said district, the court may again appoint three commissioners for said district. [As amended by Act approved and in force June 27, 1913. Laws of 1913, p. 270.]

215. Commissioner's oath.] § 63. Each commissioner shall within ten days after his appointment take and subscribe the oath required by section 6 of this Act, and file the same with the clerk of the county court. And before making assessments as herein provided, the commissioners shall take and subscribe an oath, substantially as follows, viz. :

"We,, commissioners of district, do solemnly swear, [*or affirm*] that we will faithfully and impartially perform the duties required of us, to the best of our understanding and judgment, and make assessments of damages and benefits [*or benefits as the case may be*] in favor of or against the lands in said district, according to law."

Which oath or affirmation so subscribed shall be filed with the clerk of the county court. [Added by Act approved June 30, 1885. In force July 1, 1885. Laws 1885, p. 108.]

216. Bonds—How attested—Certified statement thereon.] § 64. Each bond issued as provided for by section 38 of the Act to which this Act is an amendment, shall be attested by the clerk of the county court, and said clerk shall also make a certified statement thereon, affixing his seal of office thereto, of the total amount of assessments and rate of interest it bears, pledged for the payment of said bond and other bonds, if any issued; the date, number, denomination and time due of all bonds issued which are a lien upon the assessments or installments of assessments of the district; when the assessments were confirmed by the county court, and the number of acres of land in the district against which said assessments were made. [Added by Act approved June 30, 1885. In force July 1, 1885. Laws 1885, p. 108.]

217. When question of organizing drainage district may be submitted to vote—Election.] § 65. Whenever a petition, signed by the owners of lands situated in any drainage district organized under any law of this State, other than the Act to which this is an amendment, equal in number to one-fifth of the adult owners of lands in such district, shall be presented to the town clerk of the township in which the lands of such district, or a major part thereof lie, or the commissioners of any drainage district not under township organization, praying to submit the question whether such district will become organized as a drainage district under this Act, to the decision of the adult owners of lands in such district, it shall be the duty of the town clerk, or such commissioners, to submit the same accordingly; and to fix the time and place within such district for holding such election and make a record thereof; and to appoint the three judges to hold such election; and to give notice of the time and place and purpose of such election by causing at least five notices thereof to be posted in public places in such district, for at least fifteen days prior to holding such election. Each owner residing within or out of such district shall have the right to cast a ballot at such election, with the words thereon, “for organization under the drainage and levee Act,” or “against organization under the drainage and levee Act”; the judges of such election shall be sworn as required by law in force concerning State and municipal elections, and shall make returns of the poll-books of such election, as soon as practicable, after the election is held, to the clerk of the county court of the county in which such district or the greater part of the lands thereof are situated; or, to the justice of the peace of the precinct in which such drainage district is situated, if the first assessment, of such district, did not exceed the sum of one thousand dollars. The clerk of the county court or justice of the peace, to whom such returns have been made, shall canvass such returns and cause a statement of the result of such election to be entered of record, and if a majority of the votes are “for organization under the drainage and levee act,” the officer canvassing such returns, shall send a certified copy of such record to the town clerk, or other officer having in his custody the records of such district, whose duty it shall be to file and record such certified copy of the result of such election, in the drainage record of such district; and such district shall, from thenceforth, be deemed to be duly incorporated as a drainage district, under this Act, and all further proceedings and work of such district shall, thereafter, be in the manner provided by this Act, but the officers of such district, then in office, shall continue as like officers of such district, until their successors shall be appointed and qualified, under the provisions of this Act. It

shall be the duty of the drainage commissioners, treasurer and other officers of any drainage district whose terms of office expire, by reason of adopting the organization under this Act, or whenever a successor or successors to any or either of the officers provided by this Act shall have been appointed and qualified, to transfer and deliver all moneys, books and papers appertaining to his office, to such successor or successors in office. [Added by Act approved June 30, 1885. In force July 1, 1885. Laws 1885, p. 108.

218. Penalty for injuring drain.] § 66. Any person who shall wrongfully and purposely fill up, cut, injure, destroy, or in any manner impair the usefulness of any drain, ditch or other work, constructed under this chapter, or heretofore constructed under any law of this State, or that may have been heretofore or may hereafter be voluntarily constructed for the purpose of drainage or protection against overflow, may be fined in any sum not exceeding two hundred dollars, to be recovered before a justice of the peace in the proper county, or if the injury be to any levee whereby lands shall be overflowed, he may, on conviction in any court of competent jurisdiction, be fined in any sum not exceeding five thousand dollars; and shall be deemed guilty of a felony and imprisoned in the State penitentiary for a term of not less than one, nor more than five years, at the discretion of the court. All complaints under this section shall be in the name of the people of the State of Illinois, and all fines, when collected, shall be paid over to the proper commissioners, to be used for the work so injured.

219. Liable for Damages for injuring drain.] § 67. In addition to the penalties provided in the preceding section, the person so wrongfully and purposely filling up, cutting, injuring, destroying or impairing the usefulness of any such drain, ditch, levee or other work, by obstructing or filling up of any natural stream, or outlet, within or beyond the drainage district shall be liable to the commissioners having charge thereof, for all damages occasioned to such work, and to the owners and occupants of land for all damages that may result to them by such wrongful Act, which may be recovered before a justice of the peace, if within his jurisdiction, or before any court of competent jurisdiction.

220. Act construed.] § 68. This Act shall not be construed to repeal or interfere with any other law on the subject of drainage passed by this or any subsequent General Assembly.

221. Repeal.] § 69. The following Acts are hereby repealed: "An Act to provide for the construction and protection

of drains, ditches, levees and other works," approved April 24, 1871; "An Act to provide for the registration of drainage and levee bonds, and to secure the payment of the same," approved April 9, 1872. But the repeal of said Acts shall not affect any suits that may be pending or any rights that may have accrued at the time this Act shall take effect.

222. Emergency.] § 70. Whereas, There is no law now in force, providing for the construction of drains, ditches and levees, by special assessment, therefore an emergency exists, and this Act shall be in force from and after its passage.

223. Drainage districts under this Act declared legally organized.] § 71. All drainage districts heretofore organized under the Act, to which this Act is an amendment, for drainage and levee purposes, or to establish a combined system of drainage in such district, or for either of such purposes, in whole or part, be and the same are hereby declared legally organized, and all such districts shall be held to have been, and to be legally organized under the laws of this State. [As amended by Act approved June 30, 1885. In force July 1, 1885. Laws 1885, p. 108.]

224. Credit on assessment for work.] § 72. In case any person assessed for benefits, contracts to do any work, and said work is done according to contract, the commissioners shall give said person a receipt for so much of said assessment as said work amounts to, and said receipt may be received by the treasurer as payment of so much of said assessment: *Provided*, That when bonds have been issued by said district, such contractor shall have an order on the funds in the hands of the treasurer for said amount. [As amended by Act approved June 30, 1885. In force July 1, 1885. Laws 1885, p. 108.]

225. How commissioners may sell or lease land.] § 72a. The commissioners of any drainage district organized under this Act are hereby authorized to lease or sell at public auction any land that may come into their possession in the manner provided for in sections numbered 32 and 72 of this Act, in such manner and on such terms as they may deem for the best interests of the district: *Provided*, That in all cases of sale of such land the sale be either at the door of the Court House, where judicial sales of land are usually made, or else on the premises to be sold, as the commissioners may order and direct. [Added by Act approved May 11, 1901. In force July 1, 1901. Laws 1901, p. 163.]

226. Real estate, when and how sold.] § 72b. No real estate shall be sold by virtue of the preceding sections except between the hours of nine o'clock in the morning and the setting of the sun on the same day, nor unless the time (specifying the particular hour of said day at which said sale shall commence) and the place of holding such sale shall have been previously advertised weekly for four successive weeks in a public newspaper printed and published in the county where said sale shall be made, if there be any newspaper printed and published in such county, and in addition thereto by putting up written or printed notices thereof in at least four of the most public places in the county where said real estate is situated; in all of which notices the real estate to be sold shall be described with reasonable certainty. [Added by Act approved May 11, 1901. In force July 1, 1901. Laws 1901, p. 163.]

227. To what this Act applies.] § 73. The Act to which this Act is an amendment, except as herein expressly provided, shall apply to "drainage and levee districts" and districts organized for the purpose of establishing a combined system of drainage independent of levees. [As amended by Act approved June 30, 1885. In force July 1, 1885. Laws 1885, p. 108.]

228. Repeal—Rights saved.] § 74. That sections numbered from 50 to 65, both inclusive, of the Act to which this Act is an amendment, be and the same is hereby repealed; but the repeal of said sections shall not affect any suits that may be pending or any rights that may have accrued at the time this Act shall have taken effect; and this section shall not be construed to repeal Sections 48 and 49 of said Act, known in this Act as sections 50 and 51, and above recited as amended in full; nor shall this section be construed to repeal sections numbered from 52 to 65, both inclusive, which are above recited at large, as additional sections of the Act to which this Act is an amendment. This Act shall not be construed to interfere with the execution and enforcement of other laws on the subject of drainage passed by this General Assembly. [Added by Act approved June 30, 1885. In force July 1, 1885. Laws 1885, p. 108.]

229. Drainage districts formed by mutual agreement—Commissioners.] § 75. Owners of lands which require combined drainage and protection from overflow, may form drainage and levee districts, by mutual agreement, to include lands, of their own only, by an instrument in writing duly signed and acknowledged and recorded in the drainage record. The mutual agreement may include the location and character of work to be done;

the adjustment of damages; the classification; the amount of taxes to be levied; how the work shall be done, or so much of these, or more, as may be agreed upon, and to this extent shall be as valid as though formed in the mode as hereinbefore provided, and may ask the judge of the county court to appoint three commissioners whose powers and duties thereafter shall be the same as prescribed by other districts, and they shall commence acting at the point reached at the aforesaid agreement: *Provided*, that the said agreement may include the selection of three drainage commissioners from their own number or from others, and their terms of office shall be until the first Monday of September thereafter, or for this term and for one year in addition, as may be agreed at the time of their appointment, and at the annual meeting thereafter the majority of the land owners may choose, by ballot, three commissioners to serve, one for one year, one for two years and one for three years from the date of appointment, and on the first Monday of each year thereafter the land owners may elect one commissioner of said district who shall hold his office for three years and until his successor is chosen and qualified. The powers and duties of the commissioners of a district by mutual agreement, and the mode and effect of special assessments, shall be the same as provided for other districts organized under this Act, and all the powers, rights and benefits of every kind given to drainage districts organized by petition to the county court shall be had by drainage districts organized by mutual agreement, and districts organized by mutual agreement may do as fully all work mutually agreed upon, as though surveys, plats and profiles, etc., were made and filed in said matter, and contracts for work to be done in said district may be let in parts, or the whole of said work may be let in one contract as is provided in this Act, as seems to be for the best interest of the parties concerned. [Added by Act approved and in force May 20, 1907. Laws 1907, p. 274.]

230. Repeal.] § 76. And be it further enacted, that section 25 of said Act be and the same is hereby repealed; saving and reserving, however, any rights that may have heretofore accrued thereunder.

231. Emergency.] § 77. Whereas, Owing to the uncertain condition of the law of this State, on the subject of assessing benefits and damages either by jury or by the commissioners, an emergency exists, therefore this Act shall be in force from and after its passage.

ADJOINING DRAINAGE DISTRICTS—CONNECTION.

AN ACT to enable adjoining drainage districts to connect their ditches, drains, levees, or other works, and to provide for the apportionment of the cost of the construction, operation and maintenance of the work of a drainage district where lands in an adjoining district are benefited thereby, and to repeal an Act therein named. [Approved June 28, 1913. In force July 1, 1913. Laws 1913, p. 271.]

- 232. Connection with adjoining district authorized.
- 233. District benefited liable for portion of cost of work, etc.
- 234. Contracts to adjust amounts to be paid by each district—approval of contract by county court.
- 235. Notices of hearing on approval of contract.
- 236. Proceedings at hearing—review.
- 237. Duty of commissioners where no contract made or contract disapproved.
- 238. Summons against district benefited—where heard—practice.
- 239. Court to determine sum and render judgment.
- 240. What petitioning district need not prove—set off by defendant.
- 241. Report of annual benefits to court—hearing—summons—practice.
- 242. Court to determine amount of annual benefits.
- 243. Judgment—order for collection of annual benefits from land owners.
- 244. Payment of judgment.
- 245. Suit against corporate authorities.
- 246. Trial by jury—venire.
- 247. Limitation of action or pleading.
- 248. Repeals Act of 1903—rights saved.
- 249. Invalid portion not to affect valid portion.

232. Connection with adjoining district authorized.] § 1.

Be it enacted by the People of the State of Illinois, represented in the General Assembly: That any drainage district organized under any law of this State, shall have the right to connect its levees, ditches, or drains with the levees, ditches, or drains of any adjoining district.

233. District benefited liable for portion of cost of work, etc.]

§ 2. That whenever any drainage district heretofore, or that may hereafter be organized under any law of this State, constructs, enlarges, extends or improves its ditch, ditches, drains, levees, or pumping plant or plants, or which has heretofore constructed, enlarged, extended or improved its ditches, drains, levees, or pumping plant or plants, within or beyond its boundaries in the manner provided by law, so as to benefit the lands or any part thereof, within any adjoining drainage district, such district so benefited shall be liable to the first mentioned district for the just proportion of the

cost of such work or improvement and the maintenance, operation and repair thereof, based upon the amount each district will be benefited thereby; and the fact that the district constructing the work or improvement herein mentioned, is organized and operating under a different law of this State from that under which the other district so benefited is or was organized or is operating, shall not preclude a recovery hereunder by such district making such improvement.

234. Contracts to adjust amounts to be paid by each district—approval of contract by county court.] § 3. Whenever any such district constructs, enlarges, extends or improves its ditch, ditches, drains, levees, or pumping plant or plants, or which has heretofore constructed, enlarged, extended or improved its ditches, drains, levees or pumping plant or plants, in the manner provided in the preceding section so as to benefit the lands of any other adjoining district, the commissioners of said district may enter into contract, in writing, settling and adjusting the respective amounts to be paid by each of said districts for the construction, operation and the maintenance of said work. Upon entering into said contract, the commissioners of the district so constructing, enlarging, extending or improving its said ditch, ditches, drains, levees or pumping plant or plants, or which has heretofore constructed, enlarged, extended or improved its ditches, drains, levees or pumping plant or plants, shall file a petition in the county court of the county where said district was organized, asking for the approval of said contract by said court to which shall be attached a copy of said contract.

235. Notices of hearing on approval of contract.] § 4. Upon the filing of said petition, the court shall set the same for hearing and the clerk of said court shall cause two weeks' notice of said hearing to be given by publishing a notice thereof for two successive weeks in some newspaper or newspapers published in the county or counties where such interested districts are situated, in whole or in part, and by posting up four copies thereof in four of the most public places within each of said districts; such notice shall be addressed to "All persons interested," and shall state when and in what court said petition was and is filed, the time and place of hearing thereon, and the general purpose of such hearing. Also, at least 7 days before the time fixed for said hearing, the said clerk of said court shall mail, postage prepaid, to each one of the property owners in said drainage districts, a notice of the time, place and general purpose of said hearing; *Provided*, that where the land owners are unknown or their address [es] cannot upon diligent inquiry be found, then the service herein by posting and publication shall be sufficient service. The certificate of the clerk of said court or the affidavit of any other credible person that said notice has been published and posted and

the said notice mailed, postage prepaid, to each of said property owners as herein required shall be sufficient proof of these facts.

236. Proceedings at hearing—Review.] § 5. Upon such hearing, all persons interested shall have a right to be heard, and the court shall make an order approving or disapproving such contract, as the circumstances of the case shall require. If, upon such hearing said contract shall be approved, the same shall thenceforth be binding upon said districts and their successive commissioners and shall be and constitute the measure of liability of each of said districts to the other, on account of such construction, operation and maintenance: *Provided*, nothing contained herein shall in any way be construed to prevent or interfere with the right of said drainage districts, or either of same, or any one or more of the interested land owners in either of said districts, from having the decision or judgment of said court reviewed, either upon appeal or writ of error precisely in the same way and under the same rules of law and practice as now appertain to other matters in law or chancery.

237. Duty of commissioners where no contract made or contract disapproved.] § 6. In case the commissioners of the said adjoining drainage districts shall fail to enter into a contract settling and adjusting the liability of each to the other, as provided in section 3 of this Act, or in case such contract may have been entered into and disapproved by the county court on a hearing, under section 5 of this Act, it shall be the duty of the commissioners of such first mentioned districts to file a petition, sworn to by at least two of the commissioners of said district, in the county court of the county where such district first mentioned was organized, against such other district, setting forth the facts and other matters under which it claims relief, together with a map, profile and specifications of the improvement or work done or proposed to be done by said district, and an estimate of the cost thereof.

238. Summons against district benefited—Where heard—Practice.] § 7. Upon the filing of such petition the usual common law summons shall issue out of said court against such other district benefited by the work of the petitioning district, which summons may be directed to any county in the State for service and return, and shall be served upon the commissioners of such other district as in common law cases. Said cause shall be heard and tried at any probate or common law term of said court, and the practice shall be as in cases at common law.

239. Court to determine sum and render judgment.] § 8. Upon the hearing of said cause the court in which said petition was

filed shall determine from the evidence what sum, if any, either district shall receive from the other and shall render judgment therefor accordingly.

240. What petitioning district need not prove—Set off by defendant.] § 9. Upon such hearing it shall not be necessary for the petitioning district to prove or establish that it has completed the construction of the work or improvement herein referred to, but it shall be sufficient that such work or improvements be laid out and approved by the authority provided by law. In such proceeding it shall be competent for the defendant district to set off or recoup any benefits occasioned to such petitioning district, or the lands thereof, by reason of any work or improvement constructed or authorized to be constructed by such defendant district.

241. Report of annual benefits to court—Hearing—Summons—Practice.] § 10. Whenever a drainage district adjoining any other drainage district shall operate and maintain any ditch, ditches, drains, levees or pumping plant or plants, the operation or maintenance of which shall benefit in any degree the district so adjoining such drainage district, or the lands thereof, and where contract has not been entered into and approved as provided by sections 3, 4 and 5 of this Act, the commissioners of said district so operating or maintaining such works shall annually in the July term of the county court of the county where said district was organized, file a report and estimate showing the amount of annual benefits estimated to be required for the operation and maintenance of such works for the ensuing year and what proportion thereof they estimate should be borne by each of said districts. Upon the filing of said report the court shall set the same for hearing and a summons shall issue, directed to any county in the State, against the commissioners of said adjoining district: *Provided*, at least ten days shall intervene between the date of service on said commissioners and such hearing, and that service upon any one or more of said commissioners shall be sufficient service on the district which such commissioner or commissioners so served represents or represent. Upon such hearing, the practice shall be as in common law cases, and said hearing may be had in either the law or probate term of said court.

242. Court to determine amount of annual benefits.] § 11. Upon said hearing the court shall determine what amount shall be necessary for annual benefits for the district so filing said report and what proportionate amount of the same shall be borne by each district, and on such hearing said defendant district shall have the right to set off or recoup any benefits occasioned by the operation or maintenance of its improvements to the said district so filing such report.

243. Judgment—Order for collection of annual benefits from land owners.] § 12. Upon the conclusion of said hearing, the court shall enter judgment according to the finding of the court and shall order and direct each of said districts to proceed to collect, from the land owners of said districts, as benefits, the respective amounts which said court has found should be borne by such respective districts, and which annual benefits shall be assessed and collected according to the provisions of the laws under which said districts shall be organized, and when so collected, shall be paid as provided in the order of said court entered on the hearing on the said report of said commissioners.

244. Payment of judgment.] § 13. The commissioners of the district agreeing to pay or against which judgment shall be entered, as provided for in this Act, shall without delay pay the same out of the funds of said district, if any, that may be lawfully applied for that purpose; otherwise the commissioners of the district, against which judgment is entered or which shall have agreed to pay as aforesaid, shall without delay levy an assessment against the lands of such district for the purpose of paying such judgment, in the manner provided by the law under which said district may be organized, or operating.

245. Suit against corporate authorities.] § 14. In case the district by or against which proceedings may be instituted under this Act is authorized by law to sue or be sued in the name of the corporate authorities thereof and not in the name of the district itself, then in such case, the proceeding hereinbefore mentioned shall be brought by or against such district, as the case may be, in the name of the proper corporate authorities thereof.

246. Trial by jury—Venire.] § 15. In any proceeding under the provisions of this Act, any party thereto, on request, shall be entitled to a trial by jury. In any such case the clerk of said court shall issue a venire or venires for such number of jurors as the said court may order, and from whom said jury shall be selected, as in other cases at common law.

247. Limitation of action or pleading.] § 16. The period of limitation of any suit or proceeding brought under the provisions of this Act, or upon any set-off or recoupment pleaded as a defense in any such suit or proceeding, shall be ten years from the time of the constructing, enlarging, extending or improving such ditch, ditches, drains, levees, pumping plant or plants.

248. Repeals Act of 1903—Rights saved.] § 17. That an Act entitled, "An Act to require drainage districts lying above a

lower drainage district, or emptying into a lower drainage district, whether such district be organized under the same, or different drainage laws of this State, to pay to the lower drainage district, for benefits received, if any, by the lands of the upper district, by the enlarging or improving of the ditches or drains of the lower district, or the construction of an outlet or outlets from the ditches or drains of the lower district, within or outside the boundaries of said lower district; and to provide for the collection and payment of such benefits," approved May 14, 1903, in force July 1, 1903; as amended by an Act approved and in force April 13, 1911, be and the same is hereby repealed, saving and reserving, however, any rights that may have accrued thereunder.

249. Invalid portion not to affect valid portion.] § 18. The invalidity of any portion of this Act shall not affect the validity of any other portion thereof which can be given effect without such invalid part.

ADJOINING DRAINAGE DISTRICTS—JOINT WORKS.

AN ACT to enable adjoining drainage districts to construct and erect a joint pumping station or joint pumping stations, ditches, levees, or other works, to contract for the proportion of the cost of construction and maintenance of the same to be paid by each, and providing for the approval of the same. [Approved June 27, 1913. In force July 1, 1913. Laws 1913, p. 276.]

- 250. Joint systems authorized.
- 251. Contract in writing.
- 252. Petition to county court for approval of contract.
- 253. Notice of hearing.
- 254. Hearing on contract—measure of liability—subsequent contract.
- 255. Appeal to Supreme Court.

250. Joint systems authorized.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That adjoining drainage districts, whether organized under the same or different laws of this State, may construct and erect a joint pumping station or joint pumping stations, ditches, levees, or other works, and may maintain and operate the same as hereinafter provided.

251. Contract in writing.] § 2. That whenever the commissioners of any adjoining drainage districts may determine that it

is necessary or advisable to construct, erect, maintain and operate, a joint pumping station or joint pumping stations, ditches, levees, or other works for the joint use of both districts, they may enter into contract in writing providing for the construction, erection, operation and maintenance of the same, and providing for the apportionment of the cost of the same between said districts.

252. Petition to county court for approval of contract.] § 3. Upon entering into such contract, the said commissioners shall file a petition in the county court of the county where said districts are located, or if said districts are located, in whole or in part, in two or more counties, in one of said counties, asking for the approval of said contract by said court, to which shall be attached a copy of said contract.

253. Notice of hearing.] § 4. Upon the filing of said petition, the said court shall set the same for hearing and the clerk of said court shall cause two weeks' notice of said hearing to be given by publishing a notice thereof for two successive weeks in some newspaper or newspapers published in the county or counties where such contracting districts are situated, in whole or in part, and by posting up four copies thereof in four of the most public places within each of said districts; such notices shall be addressed to "All persons interested," and shall state when and in what court said petition was and is filed, the time and place of hearing thereon, and the general purpose of such hearing. The certificate of the clerk of said court or the affidavit of any other credible person that said notice has been published and posted as herein required shall be sufficient proof of these facts.

254. Hearing on contract—Measure of liability—Subsequent contract.] § 5. Upon such hearing, all persons interested shall have a right to be heard and the court shall make an order approving, modifying or disapproving such contract, or shall make any other order, as in the circumstances of the case shall require. If, upon such hearing, the said contract, as so presented, or as modified by order of said court, be approved, the same shall thenceforth be binding upon said districts and their successive commissioners and

shall be and constitute the measure of liability of each of said districts to the other, on account of such construction, erection, maintenance and operation, until the same may be modified or set aside by a subsequent contract between the commissioners of said districts, approved as herein provided.

255. Appeal to Supreme Court.] § 6. Appeals from any order entered under this Act may be taken to the Supreme Court of this State by any person interested.

DIVISION IV.

FENCES.

AN ACT to revise the law in relation to fences. [Approved March 21, 1874. In force July 1, 1874. Revised Stat. Chapter 54.]

1. Fence viewers.
2. What constitutes a legal fence.
3. Division fences.
4. When lands inclosed—Contribution.
5. Value of fence, etc., ascertained.
6. Neglect to repair and rebuild.
7. Disputes settled.
8. Choice of viewers—notice.
9. Viewing fence—Disagreement.
10. Decision.
11. Neglect—Damages.
12. Making and repairing fence destroyed.
13. Refusing to make or repair.
14. Removal of division fence.
15. Removal without notice.
16. Mistake in locating fence.
17. When removal may not be made.
18. Viewers may examine witnesses, etc.
19. Fees.
20. Trespass—Damages.
21. Damages—*feasant*—Rescue.
22. Hedge fences.
23. Hedge fences along highways.
24. Non compliance of Act—penalty.
25. Non-resident owners—cost of trimming.

1. **Fence viewers.]** § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That in townships, under township organization the town assessor and commissioners of highways shall be *ex officio* fence viewers in their respective towns. In counties not under township organization the county board, at their annual meeting in December, shall appoint three fence viewers in each precinct, who shall hold their office for one year, and until their successors are appointed.¹ [Laws 1861, p. 221, § 4; Laws 1857, p. 160, § 14.]

2. **What constitutes a legal fence.]** § 2. Fences four and one-half feet high, and in good repair, consisting of rails, timber, boards, stone, hedges, barb wire, or whatever the fence viewers of the town or precinct, where the same shall lie shall consider

(1) The duties of fence viewers are chiefly judicial, hence they should not be of kin to either party. *Sanborn v. Fellows*, 22 N. Hamp. R. (2 Fost.), 473.

equivalent thereto, shall be deemed legal and sufficient fences: *Provided*, that in counties under township organization, the electors, at any annual town meeting, may determine what shall constitute a legal fence in the town, and in counties not under township organization, the power to regulate the height of fences shall be vested in the county board.² [As amended by Act approved May 4, 1887. In force July 1, 1887. Laws 1887, p. 188.]

3. **Division fences.**] § 3. When two or more persons shall have lands adjoining, each of them shall make and maintain a just proportion of the division fence between them, and if said fence shall be a hedge fence, then the owner or owners of such hedge fence shall, during the year after such hedge has attained the age of seven years, cut back or trim such hedge fence to a height not to exceed four feet, and shall at least once in every two years thereafter, cut back or trim such hedge fence to the height of five feet: *Provided*, that the provisions of this section shall not apply to any hedge fence protecting either an orchard or buildings, or wind break, not to exceed thirty rods. If the owner or owners of such hedge fence shall fail or refuse to comply with the provisions of this Act, on or before the fifteenth day of June in the year that said hedge should be cut or

(2) A fence is nothing more than a line or obstacle to restrain or exclude animals, or to serve as notice of possession, and may be composed of anything and in such manner as to answer such purpose. *Allen v. Tobias*, 77 Ill. R., 169.

A division fence between adjoining land owners may be established by agreement of the parties, as well as under the statute. *D'Arcy v. Miller*, 86 Ill. R. 102. The agreement should be reduced to writing, each party taking a copy, although a parol agreement for partition is held to be valid. *Guyer v. Stratton*, 29 Conn. R., 421.

Form of Agreement to Divide and Maintain a Division Fence Between Adjoining Owners.

This agreement, made this _____ day of _____, A. D. one thousand nine hundred and _____, between A. B., of the town of _____, in the county of _____, and State of Illinois, of the one part, and C. D., of the same town, of the other part, witnesseth, that whereas the said A. B. has heretofore erected a fence on the division line between his lands and the lands of the said C. D., which said fence commences at [*describe the location of the fence*]. And whereas, after the erection of said fence, the said C. D. inclosed a field on the *east* side of said division line, so that _____ rods of said fence, commencing at the, etc. [*describe the location of said portion of the fence*], has become and now is a partition fence between the fields of the said A. B. and C. D.; and whereas, the said C. D. has paid to the said A. B. _____ dollars, being in full for one-half of the value of said _____ rods of fence, it is therefore agreed between the parties hereto that the _____ rods of fence on the *north* part of said _____ rods shall be well and sufficiently maintained and kept in repair by the said A. B., and the remainder of said _____ rods shall be kept in like repair by the said C. D.

In witness whereof, the said parties have hereunto set their hands and seals the day and year first above written,

trimmed, any one of the owners of such division fence having complied with the provisions of this Act may give the owner or owners, or their agents, of any such uncut or untrimmed hedge, ten days' notice, in writing, to cut or trim such hedge. And should the owner or owners, or their agents, so notified fail or refuse to comply with said Act it shall be lawful for the person giving said notice to cut or trim or cause to be cut or trimmed in accordance with law, and the cost and damage of cutting or trimming such hedge may be recovered off of the owner or owners of such hedge before a justice of the peace or any court of competent jurisdiction. [As amended by Act approved June 1, 1889. In force July 1, 1889. Laws 1889, p. 156.]

4. When lands inclosed—Contribution.] § 4. When any person shall have chosen to let his land lie open, if he shall afterward inclose the same, or if any owner of land adjoining upon the inclosure of another shall enclose the same upon the inclosure of another, he shall refund to the owner of the adjoining lands a just proportion of the value at that time of any division fence that shall have been made by such adjoin-

The liability imposed by statute upon the owners of adjoining land to contribute their just share towards the costs, etc., of a division fence is fixed at the time the fence becomes a division fence. The grantee of one who has built a division fence does not succeed to the right of his grantor to enforce contribution from the adjoining owner. This right, being a mere chose in action, is not the subject of assignment. *Hale v. Andrews*, 75 Ill. R., 252.

It is a legal incident attached per se to all lands enclosed and holden in severalty, running with them perpetually and unaffected by ulterior divisions and subdivisions, that each of the adjoining proprietors shall make and maintain one-half of the division fences. So, where a division fence has been apportioned between adjoining owners, and the land on either side becomes thereafter subdivided, by conveyance, between two or more grantees, they may call for a new apportionment or division of such fence, according to this changed condition of ownership. *Wright v. Wright*, 21 Conn. R., 329.

The statute does not require that the portion of division fence assigned to each owner should be contiguous. *Prescott v. Mudgett*, 13 Maine R., 423.

An occupant of land who is bound to maintain a fence between his own and an adjoining inclosure, may place half of a fence, of reasonable dimensions, on the land of the adjoining owner; and he may cut half of a ditch on the land of such owner, when a ditch is proper for a partition fence. *Newell v. Hill*, 2 Metc. R., (Mass.), 180.

It has become a part of the common law of this country, that adjoining owners of farms may erect crooked or Virginia fences, as division fences, occupying the necessary quantity of land upon each side of the mathematical line, and that such fence is a fence in contemplation of law, upon the line between the adjoining farms, and is a fence on the side of the farm. *Ferris v. Van Buskirk*, 18 Barb. R., 397.

If, in the erection of a division fence, more than one-half is built upon the land of one of the adjoining owners, without his consent, he may remove the excess; and if, in order to effect such removal it becomes necessary to take down the whole fence, he may rightfully do so. *Sparhawk v. Twichell*, 1 Allen R., (Mass.) 450.

A brush fence, maintained near the line, between the possessions of two adjoining owners, but not continued at all times in the same place, is not evidence of an adverse possession, so as to bind either party to the line usually occupied by such fence. *Smith v. Hosmer*, 7 N. Hamp. R., 436.

If there is in fact a division fence, the duty of contribution to maintain it exists, although the line may be in dispute. *Stephens v. Shriver*, 25 Pa. St. R., 78.

ing owner, if the same shall be a ditch or hedge, and if the same be not a ditch or hedge, he shall immediately build his proportion of such division fence, or refund to said adjoining owner a just proportion of the value at that time of such fence.¹ [Laws 1857, p. 159, § 2.]

Where one of two owners of adjoining lots of land sees the other erect a permanent fence between their lands, without making any objection, this is evidence of an agreement on his part that the fence is erected on the true line. *Eaton v. Rice*, 8 N. Hamp. R., 378.

It is the intention of the law that only those having inclosed lands adjoining shall be required to maintain partition fences between their own and the next adjoining inclosures. If at the time the fence viewers act in determining that one of the occupants of adjoining lands shall erect and maintain or pay for a part of a division fence, the lands of such party are uninclosed, their proceedings are without jurisdiction and void. *Bechtel v. Neilson et al.*, 19 Wis. R., 49. And unless the proceedings are valid, the plaintiff cannot recover under the statute for building the defendant's part of the fence. *Fairbanks v. Childs*, 44 N. Hamp. R., 458.

Where the owners of two adjoining tracts of land join their fences so as to have but one field in common, and no division fences built, it is the business of one to see that the fence of the other is sufficient to turn ordinary stock. *Stoner et al. v. Shugart, Jr.*, 45 Ill. R., 77. See *Seeley v. Peters*, 5 Gilm. R., 130.

The law in relation to partition fences does not apply to ornamental partition fences between city and village lots, but to the ordinary fences of the country, such as are usually built on agricultural lands. *Brooks v. Allen*, 1 Wis. R., 127.

Where a party is not bound by prescription, agreement, or assignment of fence viewers, to maintain a fence between his land and that of an adjoining owner, he may sustain an action of trespass against the adjoining owner, whose cattle escape into his land. The common law on this point is not altered by the statutes. *Thayer v. Arnold*, 4 Metc. R., (Mass.) 589.

At common law, the owner of a close was not obliged to fence against the occupant of an adjoining close. The design of the statute is not to keep the cattle of others off the premises, but to keep home the cattle of the occupant. *Hurd v. Rutland, etc.*, R. R. Co., 25 Vt. R., 116.

The owner of land adjoining a highway is not bound to erect a fence along such highway. The statute applies only to owners of adjoining closes. *Chambers v. Matthews*, 18 N. J. L., (3 Harr.) 368.

A person is not bound to maintain partition fences against the cattle of another who is not an adjoining owner or occupant. *Aylesworth v. Herrington*, 17 Mich. R., 417.

The general rule that a party who is the owner of personal property, which is upon the land of another, cannot therefore enter to take it away, does not apply to an entry necessary to enable a person to make his part of the fence. As the law requires each owner to make his portion of the fence, this duty carries with it the right to such necessary occupation for the time being as is required to enable him to comply. *Carpenter v. Halsey*, 60 Barb. R., 45.

The legislature of a State has the constitutional power to regulate, by statute, the relative rights and responsibilities of the proprietors inclosed land and the owners of stock going at large or kept in adjacent inclosures. *Wills v. Walters*, 5 Bush. (Ky.), 351.

(1) Wooded land which has been used as a sugar bush and wood lot, and partly cleared but not occupied, is not within the statute exempting from fencing, and land allowed to "lie open to a public common." *Perkins v. Perkins*, 44 Barb. R., 159.

The right of an owner who has erected a partition fence to recover the value of one-half thereof, against the owner of adjoining land, is complete by the commencement of proceedings to have the value of such half ascertained by fence viewers, and cannot be defeated by a sale of the land, and a notice by the purchaser that he does not intend to occupy or improve, or inclose it, subsequent to the application to the fence viewers, and notice of such application by them to the original owner, though previously to any further proceedings by them. The liability of the owner or occupant of land, which has lain uninclosed, on inclosing or depasturing the same, to pay for the one-half of a partition fence, attaches immediately upon such inclosing or depasturing. *Field v. Proprietors, etc.*, 1 Cush. R. (Mass.), 11.

5. Value of fence, etc., ascertained.] § 5. The value of such fence, and the proportion thereof to be paid by such person, and the proportion of the division fence to be made and maintained by him, in case of his inclosing his land, shall be determined by two fence viewers of the town, in counties under township organization, and in other counties by any two fence viewers of the precinct.² [Laws 1857, p. 159, § 3.]

Where two persons own adjoining closes of improved land, and a partition fence has never been divided, or the portion to be kept up by each in any manner ascertained, neither can impose upon the other, or claim for himself the protection contemplated by the statute regulating fences. *Coxe v. Robbins*, 9 N. J. L. (4 Hals.), 384.

The laws regulating partition fences, party walls, and other like police regulations, are an ancient branch of legislation. Their object is to regulate the management and enjoyment of property by the owners at their common expense, and they are a proper and constitutional exercise of legislative power. *Coster v. Tide Water Co.*, 18 N. J. Eq., 54.

(2) Fence viewers are made the sole judges in controversies concerning division fences, and of the sufficiency of such fences, as well as of all other fences, and are to decide by direct examination of the premises. *Fox v. Beebe*, 24 Conn. R., 271.

It is held that any person occupying land, and interested in the making and maintaining a division fence, be his estate or interest in the premises what it may, is entitled to avail himself of the provisions of the statute in reference to division fences; the remedy is not limited to the owner of the fee. *Bronk v. Becker*, 17 Wend. R., 320.

An appraisal by fence viewers does not prevent a party from proving by other evidence the expense of building the adjoining owner's portion of a division fence, in a suit brought to recover the cost of such portion. *Perkins v. Perkins*, 44 Barb. R., 134.

Form of Notice to Adjoining Owner to Choose Fence Viewers as to Value of Division Fence.

To A. B.:

You are hereby notified that you having enclosed your lands adjoining inclosed lands belonging to me, in the town of ———, county of ———, State of Illinois, your land being described as follows: [*describe the lands briefly*], and my said lands being described as follows: [*describe lands briefly*] so that the fence, all of which belongs to me, on the line of my said land, is the division fence between that and your land; that I desire to have the value and proportion thereof which you should pay determined by the fence viewers of the town aforesaid, and that if you shall neglect for eight days after receiving this notice to make choice of a fence viewer to act in said matter, I shall thereafter proceed and select both, and submit to them the matter aforesaid.

Dated this ——— day of ———, A. D. 19—.

C. D.

Form of Determination of Fence Viewers as to Value and Proportion of Division Fence.

State of Illinois, }
County of ——— } ss.
Town of ——— }

Whereas, it appears to the undersigned, fence viewers of said town of ———, that L. M. has lately inclosed his lands in said town, described as follows: [*describe lands briefly*], adjoining the enclosed lands of O. P., so that the fence belonging to said O. P. has become the division fence between the enclosed lands of said parties,* and said parties having duly

6. Neglect to repair and rebuild.] § 6. If any person neglect to repair or rebuild a division fence, or portion thereof, which he ought to maintain, any two fence viewers of the town or precinct, as the case may be, shall, on complaint by the party aggrieved, after giving due notice to each party, examine such fence, and if they deem the same to be insufficient, they shall so notify the delinquent party, and direct him to repair or rebuild the same within such time as they may deem reasonable.¹

selected the undersigned fence viewers of said town [*or as the case may be*] to determine the value of such fence and the proportion thereof to be paid by said L. M., and the proportion of the same to be maintained by him, due notice being given to each party, and having heard the allegations of the parties, said fence viewers do determine that the value of said fence is ——— dollars, that the proportion thereof to be paid by said L. M. to said O. P. is ——— dollars, and that the proportion of said division fence to be maintained by said L. M., is as follows: [*describing the portion of fence allotted, by distances from point to point, or other convenient description*].

Witness our hands, this ——— day of ———, A. D. 19—.

A. B., } Fence
C. D., } Viewers.

In case both fence viewers are selected by one party, after notice and neglect of the other party to make choice, the foregoing form may be changed by omitting the words, "and said parties," at the *, and inserting the following:

"Said L. M. having neglected to make choice of fence viewers, after due notice, and said O. P. having," etc.

(1) The complaint to the fence viewers by a party aggrieved is not required to be in writing. It will be proper, however, that the notice to the parties by the fence viewers, and subsequent proceedings, should be reduced to writing. The proceedings of fence viewers should be treated, as to matters of form, with at least the indulgence extended to proceedings before justices of the peace; and where it appeared that a party was notified verbally, and by the opposite party, and was present at the meeting of the fence viewers, and made no objection at that time, the notice was held sufficient. *Talbot v. Blacklege*, 22 Iowa R., 57.

Form of Notice to Adjoining Owner Who Neglects to Repair or Rebuild Division Fence.

To A. B.:

You are hereby notified that you having neglected to repair [*or rebuild*] your proportion of the division fence between our adjoining lands in the town of ———, county of ———, and State of Illinois, your said lands being described as follows: [*describe the land briefly*], and my said lands being described as follows: [*describe land briefly*], that I desire to submit the matter of the sufficiency of said fence and your duty in the premises to fence viewers, of the town aforesaid, for their decision; and that if you shall neglect for eight days after receiving this notice to make choice of a fence viewer to act in said matter, I shall thereafter proceed and select both fence viewers for that purpose, and submit to them the matter aforesaid.

Dated this ——— day of ———, A. D. 19—.

C. D.

Form of Notice to Parties by Two Fence Viewers for Examination of Fence.

To C. D.:

You are hereby notified that complaint having been made by A. B. to the undersigned, fence viewers of the town of ———, that you have neglected

7. **Disputes settled.]** § 7. If disputes arise between the owners of adjoining lands, concerning the proportion of fence to be made or maintained by either of them, such disputes shall be settled by any two of the fence viewers of the town or precinct, as the case may be, and in such cases it shall be the duty of the two fence viewers to distinctly mark and define the pro-

to [*state what is complained of*], and that we shall on the ——— day of ———, A. D. 19—, at the hour of — o'clock, — M., proceed and examine such fence with a view to such action in the premises as the case shall require.

Dated this ——— day of ———, A. D. 19—.

L. M., } Fence
R. S., } Viewers.

Form of Direction by Fence Viewers to Repair or Rebuild Fence.

State of Illinois, }
County of ——— } ss.
Town of ——— }

Complaint having been made by A. B. to the undersigned, fence viewers of said town of ———, that [*state the substance of complaint, showing the location of the fence*], said fence viewers having been duly selected by said A. B.* and C. D. to act in said matter [*or as the case may be*], we did, having given due notice thereof to each party in the premises, proceed, on the ——— day of ———, A. D. 19—, and examine such fence, and having heard the allegations of the parties did and do deem the same to be insufficient, and do direct that [*state the direction or order made*].

Witness our hands, this ——— day of ———, A. D. 19—.

L. M., } Fence
R. S., } Viewers.

In case both fence viewers are selected by one party, after notice and default by the other, change the foregoing form by inserting at the *, in place of the words, "and C. D.," the following:

"Said C. D. having neglected to make choice of fence viewers, after due notice, and said A. B. having selected the undersigned fence viewers."

The fence viewers, in their proceeding on the complaint of a person aggrieved, would undoubtedly be confined to the subject of the complaint. If that related to the repairing of a fence, they probably would not have authority to assign to the adjoining occupants their respective share of the fence, and direct the rebuilding within a specified time. *Sears v. Charlemount*, 6 Allen R. (Mass.), 437.

The application or complaint to the fence viewers may include the whole subject in controversy; but before a party can be affected by the acts or decisions of the fence viewers, he must have notice. *Fairbanks v. Childs*, 44 N. Hamp. R., 458.

A good and sufficient fence must be not merely one which will turn ordinary stock, but one that will turn stock even though, to some extent, unruly. *C. & A. R. R. Co. v. Utley*, 39 Ill. R., 411.

The common law rule, requiring the owner of stock to keep it upon his own land has been recognized, in some cases, in this State, as governing inside or division fences. *Headen v. Rust*, 39 Ill. R., 186.

Where, in a field occupied by several persons, there is an inner fence, one of the occupants of the field cannot remove such inner fence at pleasure, though he may be the owner thereof, without rendering himself liable to his co-occupant for any damages resulting therefrom. Nor is it any defense to an action of trespass growing out of the removal of the inner fence, to show that the complaining party was bound to keep the outer fence in repair, or that he might have repaired the same at small expense. *Buckmaster v. Cool*, 12 Ill. R., 74.

portion of the fence to be made or maintained by each.¹ [Laws 1857, p. 159, § 4.

8. Choice of viewers—Notice.] § 8. When any of the above mentioned matters shall be submitted to fence viewers, each party shall choose one; and if either neglect, after eight

In an action to recover for the trespasses committed in the field of the plaintiff by the hogs of the defendant, it appeared the hogs entered the plaintiff's field through a division fence from an adjoining field owned by the defendant, such division fence being owned entirely by the plaintiff. Held, the fence was not a partition fence under the statutes, hence, the question of its sufficiency was not involved. Under such circumstances the rule of the common law prevails, that each man is bound to take care of and keep his animals on his own land. *McBride v. Lynd*, 55 Ill. R., 411.

If one of the owners of a division fence shall neglect to keep his portion in repair, the other cannot, without notice to him, select both fence viewers and charge him with all the costs of the view. The party not notified will not be bound by the action of the viewers, and therefore will not be liable for any expense on their account. *Thompson v. Bulson*, 78 Ill. R., 277.

Held, in New Hampshire, that it is the occupier and not the owner of a close who is bound to keep the fences in repair. *Tewksbury v. Buklin*, 7 N. Hamp. R., 518.

Where fence viewers find a divisional fence to be insufficient, their notice to the persons bound to repair it need not specify the particulars in which it is defective. *Fox v. Beebe*, 44 Conn. R., 271.

(1) Where a dispute arises as to the proportion of a fence to be maintained by each party, it may be settled by fence viewers, even where there has been an agreement on the subject. *Berger v. Kortwright*, 4 Johns. R., 414.

The decision of the fence viewers as to the proportion of fence of each party is not necessary where there is no dispute between them. *Willoughby v. Cotton*, 9 Johns. R., 136.

The fence viewers have authority to determine what portion of a division fence shall be paid for or repaired by an adjoining occupant, but over the payment of the same so ascertained they have no control. In a suit for money awarded by fence viewers to be due from one adjoining proprietor to another for a partition fence voluntarily built by the latter, evidence that he was paid for the same by the person who subsequently conveyed the adjoining premises to the former is admissible. *Butler v. Barlow*, 2 Wis. R., 10.

It is held that an appraisal by fence viewers does not prevent a party from proving by other evidence the expense of building the adjoining owner's portion of a division fence in a suit brought to recover the cost of such portion. *Perkins v. Perkins*, 44 Barb. R., 134.

The statute in relation to partition fences authorizes fence viewers to assign distinct portions of the dividing line to adjoining owners. Any direction beyond this by the viewers is simply void, but does not invalidate their acts so far as they had authority. *Longly v. Hilton*, 34 Maine R., 332.

An assignment by fence viewers of only a part of a continuous line of partition fence is not for that reason invalid, neither party at the time requesting that the whole line be divided. After such assignment duly made, the obligation of the parties are fixed to maintain the fence accordingly, and cannot be changed, without consent by a subsequent view and division by the fence viewers of the whole continuous line of partition fence. *Alger v. Pool*, 11 Cush R. (Mass.), 450.

Where the plaintiff in an action to recover the sum awarded to him, by the fence viewers, alleged that he and the defendant were owners of enclosed lands, separated by a stone wall, which was originally built by W., under whom the plaintiff holds, and which in consequence of a division of the land in July, 1826, it became the duty of the defendant to unite with the plaintiff in dividing, and to pay the plaintiff such sums as should be awarded by the fence viewers; it was held, that the fence viewers, on the plaintiff's application had power and right to divide and apportion the fence anew. *Wright v. Wright*, 21 Conn. R., 329.

The division of enclosed lands by sale or otherwise, prima facie subjects them to a new division of the partition fence among the new adjoining owners. *Wright v. Wright*, 21 Conn. R., 329.

The existence of a dispute about a partition fence is sufficient to enable the fence viewers to interpose. *Barger v. Kortwright*, 4 Johns. R., 414.

days' notice in writing, to make such choice, the other party may select both. And for all purposes of notice under this Act, it shall be sufficient to notify the tenant or person in possession of said adjoining premises, when the owner thereof is not a resident of the town in which such fences are situated.¹ [Laws 1857, p. 159, § 5.]

9. Viewing fence—Disagreement.] § 9. The two fence viewers so chosen shall examine the premises, and hear the allegations of the parties. In case of their disagreement, they shall select another fence viewer to act with them; and the decision of any two of them shall be final upon the parties to such dispute, and upon all parties holding under them. [Laws 1857, p. 159, § 6.]

10. Decision.] § 10. The decision of the fence viewers shall be reduced to writing; shall contain a description of the

Where a dispute arises between parties as to the value of division fences, and the proportion to be paid to him who has erected the whole fence, the fence viewers of the town have jurisdiction of the matter. The decision of the fence viewers in such a case, should be reduced to writing and filed in the office of the town clerk, and an action will be to recover the sum in the certificate stated to be due. *Hewitt v. Watkins*, 11 Barb. R., 409.

The notice served, under which fence viewers are selected, is jurisdictional, and they cannot, without the express consent of the parties interested, act upon any other or different question than that expressed in the notice, and without notice they cannot be selected to act at all. When fence viewers were selected under notice that they were to be selected to settle a dispute concerning the proportion of a division fence to be made by each of the parties, they will have no power to assess the amount to be paid by one of the parties to the other for a portion of a fence already built. *Hale v. Andrews*, 75 Ill. R., 252.

(1) Whilst the words "any of the above mentioned matters," occurring in section 8 of this Act, would seem to have reference only to matters contained in the preceding section, the Supreme Court has recently decided that the words have reference to all matters in each preceding section of the Act wherever the selection of fence viewers is contemplated, and that the requirements of section 8 govern in all such cases. *Thompson v. Bulson*, 78 Ill. R., 277.

This is at best a forced construction of the provisions of the Act. It would seem that if the legislature intended such construction they would have employed some language to that effect in sections five and six.

Form of Notice to Adjoining Owner to Choose Fence Viewer to Settle Dispute.

To R. R.:

Sir:—A dispute having arisen between you and myself, being the owners of adjoining lands in the town of ———, in the county of ———, and State of Illinois, concerning the proportion of division fence to be made [or maintained] by each of us upon the line of our said lands, your land in question being known as [*describe the land with reasonable certainty*], and mine as [*describe the land*]. I have chosen J. W., one of the fence viewers of said town, and do hereby give notice to you to proceed and choose another of the fence viewers of said town, to the end that said dispute between us may be settled and decided by said fence viewers, and that if you shall neglect to make such choice for eight days after receiving this notice, I shall make such choice myself, and proceed to have said matter in dispute adjusted by the fence viewers thus chosen by me, the same as if one had been chosen by you.

Yours, etc.,

J. E.

Dated, etc.

fence, and of the proportion to be maintained by each, and their decision upon any other point in dispute between the parties, submitted to them as aforesaid; and shall be forthwith filed in the office of the town clerk, or in the office of the county clerk in counties which shall not have adopted township organization.¹ [Laws 1857, p. 159, § 7.]

Form of Submission of Dispute Between Adjoining Owners to Two Fence Viewers.

To P. S. and J. G., two of the fence viewers of the town of ———, in the county of ———, and State of Illinois:

A dispute having arisen between the undersigned, A. W. and B. L., owners of adjoining lands in said town of ———, concerning the proportion of division fence to be made [*or maintained*] by each on the line of their respective lands, the land of said A. W. being described as follows: [*describe the land with reasonable certainty*], and that of the said B. L. being described as follows: [*describe the land*]. The said A. W. has therefore chosen you the said P. T., and the said B. L. has chosen you the said J. G., as two fence viewers of said town of ———, to the end that you may proceed to settle and decide said matter of dispute; and the undersigned do hereby submit said matter of dispute to you the said fence viewers, and request that you will proceed according to law, and settle and decide the same as shall seem to you just and right.

Dated this ——— day of ———, A. D. 19—.

A. W.
B. L.

(1) *Form of Decision of Fence Viewers in Relation to Dispute Between Adjoining Owners.*

State of Illinois, }
County of ——— } ss.
Town of ——— }

Whereas, we, the undersigned, two of the fence viewers of said town of ———, having been chosen by R. V. and J. J., owners of adjoining lands in said town, for the purpose of settling and deciding a dispute which has arisen between them concerning the proportion of division fence to be made [*or maintained*] by each of them, on the line between their said lands, the lands in question being described as follows: [*describe the land of each*], and the said R. V. and J. J. having, on the ——— day of ———, A. D. 19—, submitted the said matter in dispute to us, for our settlement and decision, we did, on the ——— day of ———, A. D. 19—, proceed and examine the premises, and hear the allegations of the parties. The said fence we find to be a rail fence, commonly called a Virginia or worm fence, running north and south, in length one hundred and sixty rods, and being the division fence between the lands above described, that the same was originally erected jointly by the parties, and divided equally between them, the said J. J. taking the south half thereof for his portion, by agreement, and that the said J. J. now neglects and refuses to keep his portion of the same in proper repair [*or as the case may be*]. We do, therefore, adjudge and determine that [*conclude with the determination of the fence viewers according to the fact*].

Given under our hands, this ——— day of ———, A. D. 19—.

L. P., } Fence
J. R., } Viewers.

11. Neglect—Damages.] § 11. If any person who is liable to contribute to the erection or reparation of a division fence shall neglect or refuse to make or repair his proportion of such fence, the party injured, after giving sixty days' notice, in writing, that a new fence should be erected, or ten days' notice, in writing, that the reparation of such fence is necessary, may make or repair the same at the expense of the party so neglecting or refusing, to be recovered from him, with costs of suit; and the party so neglecting or refusing, after notice in writing, shall be liable to the party injured for all damages which shall thereby accrue, to be determined by any two fence viewers selected as

Form of Decision of Fence Viewers, Where Two Cannot Agree, and Another Is Selected.

State of Illinois, }
County of ——— } ss.
Town of ——— }

A dispute having arisen between A. B. and C. D., two owners of adjoining lands in said town of ———, concerning the proportion of division fence to be made [or maintained] by each of them on the line of their said lands, the land of the said A. B. being described as follows: [*describe the land or field in question*], and the lands of said C. D. being described as follows: [*describe the land or field*], the said parties did, on the ——— day of ———, A. D. 19—, submit the said matter in dispute to the undersigned, W. S. and N. W., two of the fence viewers of said town of ———, for their settlement and decision, the said parties having chosen said fence viewers for that purpose, the said fence viewers did, therefore, on the ——— day of ———, A. D. 19—, proceed and examine the premises and hear the allegations and proofs of the parties, and the said two fence viewers, being unable to agree in the premises, did select N. P., another fence viewer of said town, to act with them in making such settlement and decision, and we, the undersigned, being now fully advised in the premises, do adjudge and determine that [*conclude according to the determination of the viewers*].

Given under our hands, this ——— day of ———, A. D. 19—.

W. S., }
N. W., } Fence
N. P., } Viewers.

If one fence viewer should act by agreement of the parties, it is apprehended that his action and determination would be good and binding. *Kellogg v. Brown*, 32 Conn. R., 108.

If a part of a division fence be assigned to one to keep in repair, it is his property, so far at least that the removal of it, for lawful purposes cannot make him a trespasser. *Burrell v. Burrell*, 11 Mass. R., 294.

A decision of fence viewers requiring the occupant of uninclosed land to erect, maintain, or pay for part of a division fence, is void. The occupants of such lands are under no obligation to erect fences. *Bechtel v. Neilson*, 19 Wis. R., 49.

The proceedings of fence viewers, as to matters of form, should be treated with at least the indulgence extended to proceedings before justices of the peace. *Talbot v. Blacklege*, 22 Iowa R., 572.

Fence viewers have no authority to determine the rights of different claimants of land, or to establish disputed boundaries, and neither party is precluded, by their decision, from contesting the question of ownership in himself, or in the adverse party, or the location of their boundaries. *Shaw v. Gilfillan*, 22 Vt. R., 565.

A certificate of fence viewers adjudging where parties should set their partition fence, is not evidence of the title of those parties. *Corlis v. Little*, 13 N. J. L. (1 Green.), 229.

above provided; and the fence viewers shall reduce their appraisal of damages to writing, and sign the same.¹ [Laws 1857, p. 160, § 8.]

12. **Making and repairing fences destroyed.]** § 12. Whenever a division fence shall be injured or destroyed by fire, floods, or other casualty, the person bound to make and repair such fence, or any part thereof, shall make or repair the same, or his just proportion thereof, within ten days after he shall be thereto required by any person interested therein—such requisition to

(1) *Form of Notice to Adjoining Owner to Contribute to Erection or Reparation of Division Fence.*

To S. R.:

Sir: You are hereby notified to repair [*or as the case may be*] that portion of the division fence on the line between your land and mine, situated in the town of ———, and county of ———, according to the decision of J. L. and J. H., two of the fence viewers of said town, made on the ——— day of ———, A. D. 19—, and filed in the office of the town clerk of said town, on the ——— day of ———, A. D. 19—, and that if you shall neglect to repair the same, agreeably to said decision, for the period of ten days from the date of receiving this notice, I shall proceed myself and repair said fence at your expense.

Dated this ——— day of ———, A. D. 19—.

L. N.

Form of Appraisal of Damages by Fence Viewers, Accruing to Adjoining Owner, by Reason of Neglect to Make or Repair Fences.

State of Illinois, }
County of ——— } ss.
Town of ——— }

Whereas, we, the undersigned, two of the fence viewers of the said town of ———, having been chosen by P. B. and J. S., owners of adjoining lands in said town, for the purpose of appraising the damages claimed by the said P. B., and accruing to him in consequence of the neglect of the said J. S. to repair [*or as the case may be*] his proportion of a division fence mentioned and described in a certain decision made by [*state by whom made, or if the fence has been divided by agreement, state that fact, and Cary the form accordingly*], on the ——— day of ———, A. D. 19—, and reduced to writing, and filed in the office of the town clerk of said town of ———. We did, on the ——— day of ———, A. D. 19—, proceed to examine the premises; and after due inquiry and examination by us made, and having heard the allegations of the parties, we do determine that the said P. B. has sustained damages to his land, crops, fruit trees and shrubbery [*or as the case may be*] in consequence of the neglect of the said J. S. to repair [*or as the case may be*] his proportion of the division fence, as aforesaid; which damages we have ascertained, and do appraise at ——— dollars.

Witness our hands, this ——— day of ———, A. D. 19—.

P. S., } Fence
R. B., } Viewers.

Parol proof of the fact that written notice to repair was given, is sufficient for the purpose of showing notice. Willoughby v. Carleton, 9 Johns. R., 136.

be in writing, and signed by the party making the same.¹ [Laws 1857, p. 160, § 11.]

13. **Refusing to make or repair.]** § 13. If such person shall neglect or refuse to make or repair his proportion of such fence for a period of ten days after such request, the party injured may make or repair the same at the expense of the party so refusing or neglecting, to be recovered with costs of suit.² [Laws 1857, p. 160, § 12.]

14. **Removal of division fence.]** § 14. If any person is disposed to remove a division fence, or part thereof, owned by him, and suffer his lands to lie open, after having first given the adjoining owner one year's notice, in writing, of his intention so to do, he may, at any time thereafter, remove the same, unless such adjoining owner shall previously cause the value of said fence to be ascertained by fence viewers, selected as hereinbefore provided, and pay or tender the same to such person.³ [Laws 1857, p. 160, § 9.]

(1) *Form of Notice to Make or Repair Fence Injured by Fire, Flood, Etc.*
To A. B.:

Sir:—I do hereby require you to repair that portion of the division fence on the line between our adjoining lands in the town of ———, and county of ———, which you are bound to repair, to-wit: [*describe the fence in question*]. Should you neglect to repair said fence for the period of ten days from the date of receiving this notice, I shall proceed myself to repair the same at your expense.

Dated this ——— day of ———, A. D. 19—.

N. T.

Appraisal by fence viewers of damages in case of neglect or refusal to make or maintain division fence would embrace injuries such as treading down grass, corn, wheat and other crops, the extent of which may be ascertained on view, but would not extend to damages for death of cattle from over eating grain, in the fields of a party who has neglected to keep his proportion of the division fence in repair. *Clark v. Brown*, 18 Wend. R., 213. The appraisal, if properly made, would probably be conclusive. *Harriman v. Fifield*, 36 Vt. R., 341.

(2) The law does not require such request, under the above section, to be in writing.

(3) *Form of Notice by Adjoining Owner of His Intention to Remove His Share of Partition Fence.*

To H. H.:

Sir:—You will take notice that I intend to remove my portion of the division fence on the line of our adjoining lands [*describe the location of the fence with reasonable certainty*], that my said lands may hereafter lie open, and that I shall remove the same after the expiration of one year from the date of your receiving this notice.

Dated this ——— day of ———, A. D. 19—.

J. G.

If an existing fence is a partition fence by agreement, by acquiescence or under the statute, it cannot be removed by either owner or occupier until the other has sufficient notice. *McCormick v. Tate*, 20 Ill. R., 334.

Where a party removes a partition fence wrongfully, and his stock enters upon another's premises, he will be liable. *Stoner et al. v. Shugart, Jr.*, 45 Ill. R., 77.

15. Removal without notice.] § 15. If any such fence shall be removed without such notice, the party removing the same shall pay to the party injured all such damages as he may thereby sustain, to be recovered with costs of suit.¹ [Laws 1857, p. 160, § 10.]

16. Mistake in locating fence.] § 16. When a person has made a fence on an inclosure which afterwards on making division lines is found to be on the land of another, and the same has occurred through mistake, such first person may enter on the land of the other and remove his fence and material within six months after such line has been run.² [Revised Stat. 1845, p. 281, § 19.]

17. When removal may not be made.] § 17. But such fence shall not be removed if it was made of material taken from the land on which it is built, until the party pays or tenders to the owner of the land the value of such material, to be ascertained by the fence viewers; nor shall a fence be removed at a time when the removal will throw open or expose the crops of the other party, but it shall be removed within a reasonable time after the crops are secured, although the six months above specified have passed.

18. Viewers may examine witnesses, etc.] § 18. Fence viewers may examine witnesses on any and all questions submitted to them, and either of such fence viewers shall have power to issue subpoenas for, and administer oaths to such witnesses.³ [Laws 1857, p. 160, § 13.]

One who sows his crop after the fence has been taken down, which protects one side of his land, cannot recover damages of the wrong doer, for injury to his crop, by the entry of cattle on it. He was bound to use reasonable prudence in planting his crop. *Hassa v. Junger*, 15 Wis. R., 598.

Proprietors of adjoining lands are not under legal obligation to perpetually maintain division fences with each other. It is a matter of convenience between the parties, which either may at his pleasure terminate by giving the statutory notice. *Hoag v. Switzer et al.*, 61 Ill. R., 294.

(1) Where a party removes a division fence without having previously given the required notice, the party injured thereby is not limited to a suit for the recovery of actual damages sustained in consequence of such removal, but may make the fence anew and recover the expense thereof by action.

If actual damages are sustained, as the loss of a crop for instance, caused by the removal of the fence, an action for the recovery of such damages, as well as a suit to recover the expense of making the fence may be sustained. *Richardson v. McDougall*, 11 Wend. R., 46.

(2) The law giving the right to remove fences made by mistake upon the lands of other persons, applies only to natural persons; it has no relation to a case where a fence is erected by mistake upon the lands of the United States or of this State. *Blair v. Worley*, 1 Scam. R., 179.

(3) *Form of Subpoena for Witness by Fence Viewers.*

State of Illinois, }
County of ———, } ss.

The People of the State of Illinois to [name of witness]:

You are hereby commanded to appear before L. M. and R. S., fence

19. Fees.] § 19. Fence viewers shall be entitled to one dollar and fifty cents per day, each, for the time necessarily spent as above provided, to be paid in the first instance by the party requiring the services; and all expenses of the view shall be borne equally between the parties, except in case of view to appraise damages for neglect or refusal to make or maintain a just proportion of a division fence, in which case the costs of view shall be paid by the party in default, and may be recovered as part of the damages assessed.¹ [Laws 1857, p. 160, § 15.]

20. Trespass—Damages.] § 20. If any horse, mule or ass, or any neat cattle, hogs or sheep, or other domestic animals, shall break into any person's inclosure, the fence being good and sufficient, the owner of such animal or animals shall be liable, in an action of trespass, to make good all damages to the owner or occupier of the inclosure. This section shall not be construed to require such fence, in order to maintain an action for injuries done by animals running at large contrary to law.² [Revised Stat. 1845, p. 281, § 15.]

21. Damages feasant—Rescue.]. § 21. If any such animal or animals shall break into an inclosure surrounded by a fence of the height and sufficiency prescribed by this Act, or shall be wrongfully upon the premises of another, the owner or occupier of such inclosure or premises may take into possession such animal or animals trespassing, and keep the same until damages, with reasonable charges for keeping and feeding, and all costs of suit be paid, to be recovered in any court of competent jurisdiction; and any person who shall take or rescue any such animal so taken up from the possession of the taker-up without his

viewers of the town of ———, in said county, at [*state the place*], on the ——— day of ———, A. D. 19—, at ——— o'clock, —M., to testify and the truth to speak in a matter pending before said fence viewers, between A. B. and C. D., concerning [*state briefly the matter in controversy*].

In witness whereof the said fence viewers have hereunto set their hands this ——— day of ———, A. D. 19—.

L. M., } Fence
R. S., } Viewers.

(1) In an action of assumpsit by a land owner against his neighbor, to recover the latter's portion of money paid to fence viewers, held, that, to support the action, it must appear that the division had been made on the representation of one or both the parties; that one of them had refused to pay the part awarded him to pay, and that the division had been made on the true line between them. *Gallup v. Mulvah*, 24 N. Hamp. R. (4 Fost.), 204.

(2) In order to maintain an action for the trespass of stock upon one's inclosure, whereby damage is sustained, the owner of the inclosure must have maintained a good and sufficient fence about it. *Headen v. Rust*, 39 Ill. R., 186. This decision is understood to apply only in cases where animals are allowed to run at large.

In an action for trespass, committed by defendant's cattle upon the plaintiff's land, the defence was, that the cattle entered from the adjoining field of the de-

consent, shall be liable to a fine of not less than three nor more than five dollars for each of such animals so rescued, to be recovered on complaint before any justice of the peace of the county where such offense shall be committed, for the use of the school fund of the proper county: *Provided*, that within twenty-four hours after taking such animal into his possession, he shall give notice to the owner thereof, if known, or if unknown, he shall post notices at some public place near the premises.¹

fendant, through the plaintiff's insufficient fence. Held, that the plaintiff might show that such cattle were unruly, which would repel the defence. *Barnum v. Van Dusen*, 16 Conn. R., 200.

Where it appeared that the injury complained of in an action of trespass for damages done to the plaintiff's land by defendant's cattle, resulted from the want of a sufficient fence between the adjoining lands of the plaintiff and defendant, that it was the duty of each of the owners of these lands to make and maintain one-half of the divisional fence, and that the plaintiff had never made his part, or taken any measures toward it. Held, that the plaintiff was not entitled to a recovery. *Studwell v. Rich*, 14 Conn. R., 292.

Where A's sheep escaped from his land into B's land, through the insufficiency of a fence which B. was bound to repair, and thence passed into another adjoining lot of B. which was surrounded by a sufficient fence, and committed damage. Held, that B. could not maintain trespass therefor against A. *Page v. Olcott*, 13 N. Hamp. R., 399.

Where stock break through defendant's portion of a division fence which is defective, plaintiff can recover although his portion of the fence may also be out of repair. *Ozburn v. Adams*, 70 Ill. R., 291.

What is a good and sufficient fence is a question for the jury to determine from the evidence.

An action for the trespass of cattle may be maintained if the fence is good and sufficient, whatever may be its height. *Scott v. Wirshing*, 64 Ill. R., 102.

No one is obliged to fence against animals *fere naturae* (wild by nature), but the owner of such animals must keep them at his peril, and he is liable for damages done by them on another's land whether fenced or not. *Canefox v. Crenshaw*, 24 Mo. R., 556.

(1) The notice to the owner of animals trespassing on the land of another, where the owner is known, is not required to be in writing. It may be given verbally. The following may be the form of the notice for posting when the owner is unknown, and which may be used when the owner is known if desired to give written notice:

Form of Notice to Owner of Animals Found Trespassing on the Land of Another, to Be Posted.

To the Owner of the Animals herein described:

You, said owner, are hereby notified that on the _____ day of _____, A. D. 19—, three certain cows entered wrongfully upon my premises [*or as the case may be*], in the town of _____, in the county of _____, State of Illinois, and that I then and there took the same into my possession, at my residence at _____ [*give place of residence with reasonable certainty*], where they still remain, and are held by virtue of the statute in such cases made and provided. Said cows are described as follows: *One a red cow* [*giving description*], *one a white cow* [*giving description*], and the other a *black cow* [*giving description*].

Dated this _____ day of _____, A. D. 19—.

A. B.

Where two persons own land adjoining each other, and join fences, each building the fence on his own land, and have no partition fence between them, and cattle break through the defective fence of one and enter the premises of the other, the latter would have no right to take them up or recover for injuries against the owner of the stock. *Stoner et al. v. Shugart, Jr.*, 45 Ill. R., 77. See *Buckmaster v. Cook*, 12 Ill. R., 76, and *McCormick v. Tate*, 20 Ill. R., 334.

HEDGE FENCES.

AN ACT concerning hedge fences along the public highways in this State.
[Approved June 21, 1883. In force July 1, 1883. Laws 1883, p. 99.]

22. Hedge fences.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That the owner or owners of any hedge fence along the line of any public highway in this State, shall during the year next after such hedge shall have attained the age of seven years, cut back or trim such hedge fence to a height not to exceed five feet, and shall, at least, once in every two years thereafter, cut back or trim such hedge fence, so that the same shall not exceed the height of five feet, so that such public highway shall not be obstructed or impaired in usefulness or convenience, nor the public health be injured or jeopardized by such hedge fence: *Provided*, that the provisions of this section shall not apply to any hedge protecting either an orchard or building: *Provided, further*, that upon application by the owner of any hedge fence along any highway, to the commissioners of highways of the town where situated, in counties under township organization, or to the supervisors of highways in the road district where situated in counties not under township organization; said commissioners of highways, or supervisors of highways, as the case may be, shall permit said owner to grow a hedge fence, not to exceed one-fourth of the total length of hedge fence along the highway, on each farm of said owner, to any height desired by said owner as a windbreak for stock.

23. Hedge fences along highways.] § 2. The owner or owners of any hedge fence along the line of any public highway in this State shall, during the year next after such hedge shall have obtained the age of seven years, cut back or trim such hedge fence, except Osage hedge, which shall be trimmed annually after the second year from first trimming, to a height not exceeding four feet, and shall at least once in every year thereafter cut back or trim such hedge fence so that the same shall not exceed the height of five feet, so that such public highway shall not be obstructed or impaired in usefulness or convenience, nor the public health injured or jeopardized by such hedge fence: *Providing*, that the provisions of this section shall not apply to any hedge protecting either an orchard or building: *Provided, further*, that upon application by the owner of any hedge fence along any highway to the commissioners of highways of the town where situated in counties under township organization, or

to the supervisors of highways in the road district where situated in counties not under township organization, said commissioners of highways, or supervisors of highways, as the case may be, may, at their discretion, permit said owner to grow a hedge fence not to exceed one-fourth the total length of hedge fence along the highway on each farm of said owners to any height desired by said owner, as a windbreak for stock: *Provided, further*, that said owner shall keep all such hedges trimmed on the roadside, so that the same will not obstruct the public highway to exceed four feet from the line of said public highway.¹ [As amended by Act approved June 3, 1889. In force July 1, 1889. Laws 1889, p. 156.]

24. Non-compliance of Act—Penalty.] § 3. If the owner or owners of any such hedge fence shall fail or refuse to comply with the provisions of this Act, on or before the first day of October of each year, the said owner or owners shall be subject to a fine of not less than ten dollars (\$10) nor more than fifty dollars (\$50) in each and every year failing to comply with the provisions of this Act. Said fine may be recovered, with costs of suit, against the owner or owners of such hedge fence before any justice of the peace or other court of competent jurisdiction of the county in which said hedge is situated, by suit in the name of the commissioners of highway of the township of the counties under township organization, or commissioners of highway in the road district in counties not under township organization in which such hedge fence may be situated, said fine to be applied for the use of the road districts in which hedge fence may be growing, and the commissioners of highways shall bring or cause to be brought, such suit, in accordance with section three (3) of this Act. [As amended by Act approved June 3, 1889. In force July 1, 1889. Laws 1889, p. 156.]

(1) *Form of Application by Owner to Grow Hedge Fence as a Windbreak.*

To A. B., C. D. and E. F., commissioners of highways of the town of _____, in _____ county, State of Illinois:

The undersigned being the owner of a hedge fence along the highway in said town at [*here state portion of highway where hedge fence is located*], hereby makes application to you as such commissioners of highways for permission to grow a hedge fence of the length of _____ rods [*not to exceed one-fourth of the total length of hedge fence*] along the highway at the above named place, to the height of _____ feet, the same being desired as a windbreak for stock.

G. H.

Dated the _____ day of _____, A. D. 19—.

It is proper that the consent of the commissioners should be endorsed on such application, and the endorsement may be in the following form:

25. Non-resident owners—Cost of trimming.] § 4. That when the owner of such hedge fence does not reside in the county where such hedge fence is situated, and refuses or neglects to cut or cause the same to be cut, it shall be the duty of the commissioners of highways of the township or road district in which such hedge fence is situated, to cut, or cause such hedge fence to be cut or trimmed at any time after the first day of October in each and every year as is required by this Act. The cost of cutting or trimming, and all costs that may accrue by the cutting or trimming of such hedge fence may be recovered by such commissioners of highways in any action of debt in any court of competent jurisdiction against the owner of the land in which said hedge fence may be situated, and the commissioners of highways shall bring or cause to be brought, such suit in accordance with the provisions of section three (3) of this Act. [As amended by Act approved June 3, 1889. In force July 1, 1889. Laws 1889, p. 156.]

Form of Consent by Commissioners to Grow Hedge Fence as a Windbreak.

State of Illinois, }
——— County, } ss. Board of Commissioners of Highways.
Town of ———, }

Consent is hereby given by the commissioners of highways of the town of ———, to G. H. to grow a hedge fence for the length of ——— rods and to the height of ——— feet, along the highway at [*here state location as in application*] as a windbreak for stock, in accordance with the within application.

Given under our hands this —— day of ———, A. D. 19—.

A. B., } Commissioners
C. D., } of
E. F., } Highways.

FENCING RAILROADS—CROSSINGS. (1)

Part of AN ACT in relation to fencing and operating railroads. [Approved March 31, 1874. In force July 1, 1874.]

1. Fencing track.
2. Right of way clear of combustibles.
3. Allowing, etc., animals on right of way—Breaking fence, etc.
4. When company neglects to build—Notice.
5. Adjoining owner may build and recover.
6. Roads at crossings.
7. Bell and whistle—Crossings.
8. Killing stock—Frightening team.
9. Starting train without signal.
10. Approaches at crossings.
11. Neglect to make, etc., crossings—Notice.
12. When company neglects, authorities to construct, etc.
13. Company to pay expenses and \$100.
14. Not to obstruct highway.
15. Flagman—Shelter.
16. Penalties.
17. Corporation defined.
18. Street railroads.

1. **Fencing track.] § 1.** *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That every railroad corporation, shall, within six months after any part of its line is open for use, erect and thereafter maintain fences on both sides of its road, or so much thereof as is open for use, suitable and sufficient to prevent cattle, horses, sheep, hogs or other stock from getting on such railroad, except at the crossings of public roads and highways, and within such portion of cities and incorporated towns and villages as are or may be hereafter laid out and platted into lots and blocks, with gates or bars, at the farm crossings of such railroad, which farm crossings shall be constructed by such corporation when and where the same may become necessary, for the use of the proprietors of the lands adjoining such railroad; and shall also construct, where the same has not already been done, and thereafter maintain at all road crossings now existing, or hereafter established, cattle guards, suitable and sufficient to prevent cattle, horses, sheep, hogs and other stock from getting on such railroad; and when such fences or cattle guards are not made as aforesaid, or when such fences or cattleguards are not kept in good repair, such railroad corporations shall be liable for all

(1) So much of the above act only is inserted here as seems to have any connection with affairs under township organization, or duties of town officers. That portion which relates to public roads and highways concerns the commissioners of highways of the town.

damages which may be done by the agents, engines or cars of such corporation, to such cattle, horses, sheep, hogs or other stock thereon, and reasonable attorney's fees in any court wherein suit is brought for such damages, or to which the same may be appealed; but where such fences and guards have been duly made and kept in good repair, such railroad corporation shall not be liable for any such damages, unless negligently or willfully done.¹ [As amended by Act, approved May 29, 1879. In force July 1, 1879. Laws 1879, p. 224.]

(1) The law prohibiting domestic animals from running at large, in force October 1, 1872, does not by implication repeal or nullify any of the provisions of the act requiring railroad companies to fence their roads, and the same is true with regard to the law preventing male animals from running at large. *R. R. I. & St. Louis R. R. Co. v. Irish*, 72 Ill. R., 404.

The obligation of a railroad company to fence its line of road does not attach until it has been in operation six months, and where the company has not been in operation six months, but had constructed a fence, it is under no obligation to keep it in repair, the duty not having attached. *Toledo, Peoria & Warsaw R. R. Co. v. Miller*, 45 Ill. R., 42. The companies are liable, under the statute, if they fail to fence within six months after they begin to run trains on the track for construction purposes. *R. R. & St. L. R. R. Co. v. Heflin*, 65 Ill. R., 366.

Where a railroad company fails to fence its track, as required by the statute, it must see that its servants so conduct its trains that injury shall not result to stock that may get upon its track, if it can be avoided by care and caution. In failing to fence, it takes the hazard, and when injury results therefrom, it must be quired to respond in damages. *Toledo, Peoria & Warsaw R. R. Co. v. Levery*, 71 Ill. R., 522.

Where a railroad company, whose road has not been in operation six months and is not fenced, its only ground of liability for injury to stock will be that the injury might have been avoided by the exercise of ordinary care and prudence, and its servants in charge failed to exercise such care and prudence. *The Gilman, Clinton & S. R. Co. v. Spencer*, 76 Ill. R., 192.

Where a railroad company fails to fence its track as required by law, or has erected an insufficient fence, or failed to maintain a fence, it is liable for all damages resulting from such omissions of duty, and this without any reference to the manner in which its engines may have been controlled. *St. Louis, Alton & Terre Haute R. R. Co. v. Linder et al.*, 49 Ill. R., 433; *Same v. Todd*, 36 Ill. R., 409.

The question of the obligation of a railroad company to fence their road at a particular place is one of law, not of fact, and should not be left to a jury to decide. *Illinois Central R. R. Co. v. Whalen*, 42 Ill. R., 396.

In cases where a railroad company are not bound to fence their road, or where others are equally bound to fence, they are nevertheless bound to use ordinary care in running their trains to prevent the injuring of stock. They would be liable for injuries in case of gross negligence in this regard. *Headen v. Rust*, 39 Ill. R., 186; *St. Louis, Alton & Terre Haute R. R. Co. v. Linder et al.*, 39 Ill. R., 433.

Where an accident is attributable to a defective fence, which it was the duty of the company to provide, if the company has failed to erect a suitable fence, negligence is inferred; but where they have performed this duty, then negligence must be proved as in ordinary cases. *Illinois Central R. R. Co. v. Whalen*, 42 Ill. R., 396.

The necessity of fencing a railroad at a given point is not obviated by there being an embankment at that place from twelve to twenty feet in height it not appearing that the embankment was sufficient to prevent stock from getting upon the track. *Toledo, Peoria & Warsaw R. R. Co. v. Sweeney*, 41 Ill. R., 226.

A railroad company are not required to fence their track upon their depot grounds in a town. *G. & C. U. R. R. Co. v. Griffin*, 31 Ill. R., 303.

A railroad company is not bound to fence its track or make cattle guards within the limits of a village, and a place where there is a station house, a warehouse, a store, a blacksmith shop, a post office, and five or six dwelling houses, comes fully up to the requirements of a village for the purpose of excusing a railroad company from fencing its track within the limits thereof. *Toledo, W. W. R'y Co. v. Spangler*, 71 Ill. R., 568.

2. Right of way clear of combustibles.] § 1½. It shall be the duty of all railroad corporations to keep their right of way

Railroad companies are not required by the statute to fence their line of road within the corporate limits of a town, and in actions against them to recover for injuries to stock, occurring within such limits, it is error to refuse so to instruct the jury. *Chicago & Alton R. R. Co. v. Engle*, 58 Ill. R., 381. But if railroad companies construct cattle guards within the limits of towns, they should keep them in repair. *C. & R. I. R. Co. v. Reid*, 24 Ill. R., 144.

The necessity for a fence where the contrary is alleged, in case of injury, is shown by proof that the cattle were upon the track. *Toledo, Peoria & Warsaw R. R. Co. v. Sweeney*, 41 Ill. R., 226.

The fence must be suitable and sufficient, so as to turn stock, even though to some extent unruly. *C. & A. R. R. Co. v. Utley*, 38 Ill. R., 410.

If a railway company neglects to comply with the statute, and an injury to an animal occurs, which is fairly attributable to such neglect, the mere fact that the animal is at large, if so at large in violation of no general or local law, will not relieve the company of its liability, even though the animal may go upon the track from uninclosed lots adjacent to the crossing, and is not standing, when injured, on the actual intersection of the railway and the highway. *Toledo, Wabash & Western R. R. Co. v. Fergusson*, 42 Ill. R., 449. See, also, *C. B. & Q. R. R. Co. v. Kauffman*, 38 Ill. R., 425.

The owner of a horse who voluntarily permitted the same to run at large contrary to the law in force in the county, cannot recover of a railway company for the killing of the same, on the ground that such railway company has failed to fence its track at the place where the animal was killed. The railroad company in such case will not be relieved of its duty to observe reasonable precaution to prevent injury. *The Peoria, etc., R. R. Co. v. Champ*, 75 Ill. R., 578.

No contributory negligence is chargeable to the owner of stock, where it breaks out of its pasture without his fault. The damages for stock killed through negligence merely, as a neglect to fence the track, is compensatory only. To authorize more, circumstances of aggravation must be shown. *T. P. & W. R. Co. v. Johnson*, 74 Ill. R., 83.

Where a railroad company fails to fence its track, as required by law, it is sufficient, to fix its liability, if the plaintiff's stock, in consequence thereof, and without any contributory negligence on his part goes upon the track of the railroad, and is there killed or injured by the company's locomotive or train. The fact that the owner of stock permits it to run at large, in violation of the act prohibiting domestic animals running at large, does not relieve the railroad companies from their duty of fencing their roads, or their liability for stock injured in consequence thereof. *Ewing v. C. & A. R. R. Co.*, 72 Ill. R., 25.

Although a plaintiff may be guilty of negligence in permitting animals at large getting upon a railroad track, it is still the duty of the railroad company to use the ordinary skill and prudence to avoid doing them injury, and failing in this, it is liable. *R. R. I. & St. L. R. Co. v. Irish*, 72 Ill. R., 405.

A verbal agreement between a property owner through whose field a railroad passed and the railroad company, that if the company would erect certain cattle guards they need not fence the sides of their road, and he would not claim damage for injury done by the road to his stock getting thereon from the field, does not pass to or bind his grantee of the premises. *St. L., A. & T. H. R. R. Co. v. Todd*, 36 Ill. R., 409.

Where cattle are injured upon a railroad at a place where the company are required by law to fence the road, and it has been in operation several years without that having been done, the company is liable for the damages resulting from such neglect of duty. *Toledo, Peoria & Warsaw Railway Co. v. Wickery*, 4 Ill. R., 76.

A railroad company passing through a common field, at which there was a crossing at the railroad track inside the inclosure used principally by the parties residing therein, it was held, that such crossing was not a public crossing, that it was the duty of the railroad company to place bars or gates there, and if it failed to do so, it would be liable for any injury to stock by its trains. *Peoria, Pekin & Jacksonville R. Co. v. Barton*, 80 Ill. R., 72.

Where stock is killed by a railroad at a place where no fence is required by law, to recover it must be proven that the killing of the stock was caused through the negligence of the company. *I. C. R. R. Co. v. Bull*, 72 Ill. R., 537.

Where two railroad companies are using the same line of road, one company being the owner, and the other using the road by its permission, the company owning the track is liable for damages done, by reason of an unfenced track, by the

clear from all dead grass, dry weeds or other dangerous combustible material, and for neglect, shall be liable to the penalties named in section one.¹

3. **Allowing, etc., animal on right of way—Breaking fence, etc.]** § 2. If any person shall ride, lead or drive any horse or other animal upon the track or lands of such railroad corporation, and within such fences or guards (except to cross at farm or road crossings), without the consent of the corporation; or shall tear down or otherwise render insufficient to exclude stock, any part of such fence, guards, gates or bars—or shall leave the gates or bars at farm crossings, open or down—or shall leave horses or other animals standing upon farm or road crossings, he shall be liable to a penalty of not less than \$10, nor more than \$100, to be recovered in an action of debt, before any court having competent jurisdiction thereof, in the name of such railroad corporation, and for the use of the school fund in the county, and shall pay all damages which shall be sustained thereby to the party aggrieved. [Laws 1855, p. 174, § 3.

4. **When company neglects to build—Notice.]** § 3. Whenever a railroad corporation shall neglect or refuse to build or repair such fence, gates, bars or farm crossings, as provided in this Act, the owner or occupant of the lands adjoining such rail-

trains of the other company, the same as if done by its own trains, and the company committing the injury will also be liable. *Toledo, Peoria & Warsaw Railway Co. v. Rumbold*, 40 Ill. R., 143; *Illinois Central R. R. Co. v. Kanouse*, 39 Ill. R., 272; *East St. L. etc. Co. v. Gerber*, 82 Ill. R., 632.

In the absence of proof of negligence, a railroad company is not liable for the killing of cattle which had strayed on to its track at a common or public road crossing. *Logansport, Peoria & Burlington R. R. Co. v. Caldwell*, 38 Ill. R., 280.

Where stock get upon a railroad track without the fault of the company, the law requires evidence beyond the mere proof that they were injured by the engine and carriages of the company on the road, to establish a liability for such injuries; there must, in such case, be proof of negligence on the part of agents and servants of the company in charge of the train at the time the injury occurred. *Chicago & Northwestern Railway Co. v. Barrie*, 55 Ill. R., 226.

Railroad companies are liable for killing mules and asses, these animals being included in the term "cattle and horses." *Ohio & Mississippi R. R. Co. v. Brubaker*, 47 Ill. R., 462.

When a fence along a railroad has been sufficient, and from accident or wrong, over which the company had no control, it becomes insufficient to turn stock, they have a reasonable time within which to repair it. It is not required that the company should have a patrol at all times, night and day, passing along their road to see the condition of the fence. If this is done daily, and they shall at once, when informed of its insufficiency, make the necessary repairs, they should not be held liable for injuries resulting from its temporary insufficient condition. The company must be held to a high degree of diligence, but not to an impossible or unreasonable extent. *Illinois Central R. R. Co. v. Swearingen*, 47 Ill. R., 206.

(1) Where a railroad company suffered a heavy growth of dry grass to remain on its right of way through a party's premises, and fire was communicated from the locomotive of a freight train, to the grass and weeds on the way and from thence communicated to the fences and grass of the plaintiff, which was destroyed. Held, that the company was guilty of negligence, and the plaintiff entitled to recover. *R. R. I. & St. L. R. R. Co. v. Rogers*, 62 Ill. R., 346.

road, or over or through which the railroad track is or may be laid, may give notice, in writing, to such corporation, or the lessees thereof, or the persons operating such railroad, to build such fence, gate, bars or farm crossings within thirty days (or repair said fence, gate, bars or farm crossings, as the case may be, within ten days), after the service of said notice. Such notice shall describe the lands on which said fence, gates, bars or farm crossings are required to be built or repaired. Service of such notice may be made by delivering the same to any station agent of said railroad corporation or the persons operating such railroad.² [Laws 1869, p. 315, § 1.]

5. Adjoining owner may build and recover.] § 4. If the party so notified shall refuse to build or repair such fence, gates, bars or farm crossings, in accordance with the provisions of this Act, the owner or occupant of the land required to be fenced shall have the right to enter upon the land and track of said railroad company, and may build or repair such fence, gates, bars or farm crossings, as the case may be, and the person so building or repairing such fence, gates, bars or farm crossings, shall be entitled to double the value thereof from such corporation or party actually occupying or using such railroad, to be recovered with interest at one per cent. per month, as damages, from the time such fence, gates, bars or farm crossings were built or repaired, in any court of competent jurisdiction, together with costs, to be taxed by the court. [Laws 1869, p. 315, § 2.]

6. Boards at crossings.] § 5. Every railroad corporation shall cause boards, well supported by posts or otherwise, to be placed and constantly maintained upon each public road or street where the same is crossed by its railroad on the same level. Said boards shall be elevated so as not to obstruct the travel, and to be easily seen by travelers. On each side of said boards shall be painted in capital letters, of at least the size of nine inches each, the words "Railroad Crossing," or "Look out

(2) *Form of Notice to Railroad Company to Build or Repair Fence, etc.*
To the —— Railroad Co.:

You are hereby notified that I require you to build [*or repair*] the fence along the line of your road on the following described land adjoining your said road, of which I am the owner [*or occupant*], to-wit: [*describe the premises with reasonable certainty*], which fence I require you to build within thirty days [*or repair within ten days*] after the service of this notice.

Dated and served this —— day of ——, A. D. 19—.

A. B.

A copy of this notice should be retained by the person serving it.

for the cars.” This section shall not apply to streets in cities, or incorporated towns or villages, unless such railroad corporation shall be required to put up such boards by the corporate authorities of such cities, towns or villages: *Provided*, that when warning boards have already been erected, under existing laws, the maintenance of the same shall be a sufficient compliance with the requirements of this section. [Laws 1849, p. 32, § 39.]

7. Bell and whistle—Crossings.] § 6. Every railroad corporation shall cause a bell, of at least thirty pounds’ weight, and a steam whistle placed and kept on each locomotive engine, and shall cause the same to be rung or whistled, by the engineer or fireman, at the distance of at least eighty rods from the place where the railroad crosses or intersects any public highway, and shall be kept ringing or whistling until such highway is reached.¹ [Laws 1869, p. 308, § 1.]

8. Killing stock—Frightening team.] § 6½. Any engineer or person having charge of and running any railroad engine or locomotive, who shall willfully or maliciously kill, wound or disfigure any horse, cow, mule, hog, sheep or other useful animal, shall, upon conviction, be fined in the sum of not less than the value of the property so killed, wounded or disfigured, or confined in the county jail for a period of not less than ten days; and any such engineer or fireman, or other person, who shall wantonly or unnecessarily blow the engine whistle, so as to frighten any team, shall be liable to a fine of not less than \$10 nor more than \$50. See “Criminal Code,” Chap. 38, § 191.

9. Starting train without signal.] § 7. If any engineer on any railroad shall start his train at any station, or within any city, incorporated town or village, without ringing the bell or sounding the whistle a reasonable time before starting, he shall forfeit a sum of not less than \$10 nor more than \$100 to be recovered in an action of debt in the name of the People of the State of Illinois, and such corporation shall also forfeit a like sum, to be recovered in the same manner.

10. Approaches at crossings.] § 8. Hereafter, at all of the railroad crossings of highways and streets in this State, the several railroad corporations in this State shall construct and maintain said crossings, and the approaches thereto, within their respective rights of way, so that at all times they shall be safe as to persons and property. [Laws 1869, p. 312, § 1.]

(1) The law does not require a railroad company to ring a bell or sound a whistle at a farm crossing. *Toledo, Peoria & Warsaw Railway Co. v. Head*, 62 Ill. R., 283.

11. Neglect to make, etc., crossings—Notice.] § 9. Whenever any railroad corporation shall neglect to construct and maintain any of its crossings and approaches, as provided in section 8 of this Act, it shall be the duty of the proper public authorities, having the charge of such highways or streets, to notify, in writing, the nearest agent of said railroad corporation of the condition of said crossing or approaches, and direct the same to be constructed, altered or repaired in such manner as they shall deem necessary for the safety of persons and property.¹

12. When company neglects, authorities to construct, etc.] § 10. If any railroad corporation of this State shall, after having been notified, as provided in section 9 of this Act, neglect or refuse to construct, alter or repair such crossing or approaches within thirty days after such notice, then said public authorities shall forthwith cause such construction, alteration or repairs to be made.

13. Company to pay expenses and \$100.] § 11. Said railroad corporation shall be holden for all necessary expenses incurred in making such construction, alteration and repairs, and in addition thereto shall be liable to a fine of \$100 for such neglect to comply with the requirements of this Act, which fine shall be enforced by the said public authorities, in the name of the People of the State of Illinois, before any court of competent jurisdiction in the county. Such fine, when collected, to be paid into the treasury of the authorities enforcing the fine.

* * * * *

When a railroad crossing is an unusually dangerous one, on account of the hilly formation of the road and parties could not see the track, owing to brush and bushes, until within a few feet, and then only a small portion on account of a sharp curve in the road, held that a neglect to sound the whistle or ring the bell would be gross negligence. *Indianapolis & St. Louis R. R. Co. v. Stables*, 62 Ill. R., 313.

(1) *Form of Notice by Commissioners of Highways to Railroad Agent for Repair of Crossing.*

To A. B., nearest agent of the ——— railroad corporation:

In pursuance of the statute in such cases made and provided, the commissioners of highways of the town of ———, in the county of ———, and State of Illinois, being the proper public authorities having charge of the highways in said town, do hereby notify you, as the nearest agent of the above named railroad corporation, that the crossing [or approaches to the crossing] of said railroad, at the point where the same intersects the highway leading from ——— to ——— [*describe place of crossing, with certainty,*] is out of repair stating wherein; [*or if the crossing or approaches have not been constructed, state accordingly,*] and said commissioners do direct that the same be repaired [*or constructed or altered*] in manner following [*state what is required*].

Dated this ——— day of ———, A. D. 19—.

[Signed by board of highway commissioners.]

14. **Not to obstruct highway.]** § 14. No railroad corporation shall obstruct any public highway by stopping any train upon, or by leaving any car or locomotive engine standing on its track where the same intersects or crosses such public highways, except for the purpose of receiving or discharging passengers or freight, or for taking in or setting out cars, or to receive the necessary fuel and water, and in no case to exceed ten minutes for each train, car or locomotive engine.

* * * * *

Any person who shall throw any stone, or other hard substance at any railroad car, train or locomotive, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not more than \$200, and shall stand committed to the county jail until such fine and costs shall be paid. [As amended by Act approved June 21, 1895. In force July 1, 1895. Laws 1895, p. 293.]

* * * * *

15. **Flagmen—Shelter.]** § 35. In all cases where the public authorities having charge of any street over which there shall be a railroad crossing, shall notify any agent of the corporation owning, using or operating such railroad, that a flagman is necessary at such crossing, it shall be the duty of such railroad company, within sixty days thereafter, to place and retain a flagman at such crossing, who shall perform the duties usually required of flagmen; and such flagman is hereby empowered to stop any and all persons from crossing a railroad track when, in his opinion, there is danger from approaching trains or locomotive engines; and any railroad company refusing or neglecting to place flagmen, as required by this section, shall be liable to a fine of \$100 per day for every day they shall neglect or refuse to do so; and it is hereby made the duty of such public authorities having charge of such street, to enforce the payment of such fine, by suit, in the name of the town or municipal corporation wherein such crossing shall be situate, before any court of competent jurisdiction in the county, and the prosecuting attorney shall attend to the prosecution of all suits as directed by said public authorities. All the moneys collected under the provisions of this Act shall be paid into the treasury of the town or municipal corporation in whose name such suits shall have been brought: *Provided*, that when any railroad company is required to keep a flagman at a crossing, it shall have the right to erect and maintain in the highway or street crossed a suitable house for the shelter of such flagman, the same to be so located as to create the least obstruction to the use of such street

or highway, and afford the best view of the railroad track in each direction from such crossing.¹ [Laws 1869, p. 314, § 8.]

16. Penalties.] § 36. If any railroad corporation, or any of its agents, servants or employes, shall violate any of the provisions of this Act, such corporation, agent, servant or employe shall, severally, unless otherwise herein provided, be liable to a fine of not less than \$10 nor more than \$200, to be recovered in an action of debt, in the name of the People of the State of Illinois, for the use of any person aggrieved, before any court of competent jurisdiction.

17. Corporation defined.] § 37. The word "corporation," as used in this Act, shall be construed to include all companies, lessees, contractors, persons, or association of persons, owning, operating or using any railroads in this state.

18. Street railroads.] § 38. This Act shall not apply to horse cars or street railroads.

(1) Streets in cities and villages or town plats are public highways and in towns not incorporated such streets would be subject to the care and superintendence of the commissioners of highways of the town.

The legislature may compel railroads to fence their tracks, and this may be done by the imposition of fines, penalties or forfeitures. *C. & St. L. R. R. Co. v. Warrington*, 92 Ill. R., 157.

A railway company is under obligation to leave every highway that it crosses in a safe condition for the use of the public in the absence of any provision in its charter to the contrary, and where this duty was imposed by the original charter, under which a railroad was built, the same duty will rest upon any company who may afterward own the road, so long as the same is operated. *The People v. C. & A. R. R. Co.*, 67 Ill. R., 118.

Although railroad companies are not required or cannot fence their tracks in an incorporated town, still they are bound to use all due and proper diligence to avoid injury to both persons and property; and they are not relieved from this duty even where stock is wrongfully running at large or trespassing on their track or right of way. *T., W. & W. R'y Co. v. McGinnis*, 71 Ill. R., 346.

A railroad company is liable for obstructing the streets of a town with its cars. *Ill. Cent. R. R. Co. v. City of Galena*, 40 Ill. R., 344; *T., P. & W. Ry. Co. v. Town of Chenoa*, 43 Ill. R., 209.

DIVISION V.

PAUPERS.

AN ACT to revise the law in relation to paupers. [Approved March 23, 1874. In force July 1, 1874. Revised Stat., chap. 107.]

SUPPORT OF THE POOR.

1. Who liable to support.
2. Who first called on—County can sue.
3. Complaint by state's attorney.
4. Complaint by overseer.
5. Summons.
6. Trial—Judgment.
7. Contribution.
8. Partial support.
9. Time of maintenance and payment.
10. Order may be changed.
11. How payments enforced.
12. Costs.
13. Bringing pauper into county—Penalty.
14. Support by county.
15. Support by towns.
16. Removal of pauper not resident of county—Charges.
17. "Residence" defined.
18. Overseers in counties under township organization.
19. Overseers in counties not under township organization.
20. Duties of overseers.
21. Letting out support of poor.
22. Bond.
23. Temporary relief.
24. Aid to non-resident poor—Burial.
25. Report of overseers to county board.
26. Appropriations.
27. Report of overseers to town auditors.
28. Powers of county board.
 - (1) Erecting and maintaining poor-house and farm.
 - (2) Gifts, bequests, etc., in aid.
 - (3) Rules, etc., for government.
 - (4) Appointment of keeper and servants, etc.
 - (5) Appointment of county physician, etc.
 - (6) Appointment of county agent.
 - (7) Appropriations.
 - (8) Sale of poor farm.
29. Account by overseer.
30. Account by county agent.
31. Account by keeper of poor-house.
32. Neglect to report.
33. Poor to be kept at poor-house.
34. Curative.
35. Township support—How abandoned.

1. **Who liable to support.]** § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:*

That every poor person who shall be unable to earn a livelihood in consequence of any bodily infirmity, idiocy, lunacy or other unavoidable cause, shall be supported by the father, grandfather, mother, grandmother, children, grandchildren, brothers or sisters of such poor person, if they, or either of them, be of sufficient ability: *Provided*, that when any persons become paupers from intemperance, or other bad conduct, they shall not be entitled to support from any relation except parent or child.¹ [Revised Stat. 1845, p. 402, § 1.]

2. **Who first called on—County can sue.]** § 2. The children shall first be called on to support their parents, if there be children of sufficient ability; and if there be none of sufficient ability, the parents of such poor person shall next be called on if they be of sufficient ability; and if there be no parents or children of sufficient ability, the brothers and sisters of such poor person shall next be called on, if they be of sufficient ability; and if there be no brothers or sisters of sufficient ability, the grandchildren of such poor person shall next be called on, if they be of sufficient ability, and next the grandparents, if they be of sufficient ability: *Provided*, married females, while their husbands live, shall not be liable to contribute for the support of their poor relatives, except when they have separate property, or property in their own right, out of which such contributions can be made: *Provided, further*, that when the county in the first instance shall furnish support to such persons as are mentioned in section 1 of this Act, that the county can sue the relatives mentioned in this section, in the manner provided in this Act, for any sum or sums paid by the county for the support of such person [s] mentioned in section 1 of this Act. [As amended by Act approved June 10, 1909. In force July 1, 1909. Laws 1909, p. 299.]

3. **Complaint by state's attorney.]** § 3. Upon any failure of any such relative, or relatives, to support such poor person as provided by this Act, it shall be the duty of the State's Attorney to make complaint thereof to the County Court of this county, against all the relatives of such pauper in this State, liable to his support, and prosecute the same.

4. **Complaint by overseer.]** § 4. The complaint provided for in the preceding section may also be made by the overseer

(1) A pauper, under our statute, is a person destitute of pecuniary means and unable to earn a livelihood in consequence of any bodily infirmity, idiocy, lunacy or other unavoidable cause. *Williams v. Franklin*, 39 Ill. R., 22.

Where a man has been supplied at his own request as a pauper for many months, it is good evidence, so far as he is concerned, that he is a pauper. *Hunnewell v. Hobart*, 40 Maine, R., 28.

A pauper is defined to be a poor person, particularly one so indigent as to depend upon the parish or town for support. *Lee County v. Lackle*, 30 Ark. R., 764.

of the poor of the town or precinct where the poor person may reside, and it shall be the duty of such overseer to make such complaint in all cases where there may not be a county agent or state's attorney, or when the county agent or state's attorney shall refuse or neglect to make the same.

5. Summons.] § 5. At least three days' notice of such application shall be given to the defendant, by summons, requiring him to appear and answer the complaint. [As amended by Act approved May 24, 1907. In force July 1, 1907. Laws 1907, p. 441.

6. Trial—Judgment.] § 6. The defendants, being duly notified, the court shall proceed in a summary way to hear the proofs and allegations of the parties, without further written pleadings, and if satisfied by the allegations and proofs that the defendants, or any of them, are not supporting such poor person, or contributing their proper share for such support, in a manner suitable to the situation of such poor person, taking into account the ability of such defendants, then the court may at the time of giving judgment in the case, and from time to time thereafter, make any and all necessary orders in regard to the custody of such poor person, and for the payment weekly to the overseer of the poor of the town or precinct, or to such other person as the court shall direct, of such sum, to be applied in the support of such poor person, as in the opinion of the court is necessary to so properly support such poor person, taking in view the ability of the defendants to furnish such support. The court may discharge any defendant that may appear not to be liable for such support, or who is contributing his fair share therefor.

7. Contribution.] § 7. If it shall appear that the relatives of a certain degree are unable wholly to maintain such poor person, but are able to contribute towards his support, the court may, in its discretion, direct two or more relatives of different degrees to maintain such poor person, and shall prescribe the proportion which each shall contribute for that purpose.

8. Partial support.] § 8. If it shall appear that the relatives liable, as aforesaid, are not of sufficient ability wholly to maintain such poor person, but are able to contribute something, the court shall direct the sum, in proportion to their ability, which such relatives shall pay weekly for that purpose.

9. Time of maintenance and payment.] § 9. The order may specify the time during which the relatives aforesaid shall

maintain such poor person, or during which any of the sums so directed shall be paid, or it may be indefinite, and until the further order of the court.

10. Order may be changed.] § 10. The court may, from time to time, vary such order whenever circumstances shall require it, on the application either of any relative affected thereby, or of the county agent or overseer of the poor, upon ten days' notice being given to the opposite party.

11. How payments enforced.] § 11. Payment of the several sums under such order as they fall due may be compelled by attachment as for contempt against the persons of the defendants, or by execution against their lands and tenements, goods and chattels, or both, in like manner as other judgments at law or decrees in chancery.

12. Costs.] § 12. In every such application, if the judgment shall be against the defendant, he shall also be adjudged to pay the costs of the proceeding, or the costs may be apportioned according to the rights of the case, but if the application is dismissed it shall be at the costs of the county or town on whose behalf the application is made. [Laws 1869, p. 369.]

13. Bringing pauper into county—Penalty.] § 13. If any person shall bring and leave any pauper in any county in this State, wherein such pauper is not lawfully settled, knowing him to be a pauper, he shall forfeit and pay the sum of \$100 for every such offense, to be sued for and recovered by and to the use of such county by action of debt, before any justice of the peace in the proper county. [Revised Stat. 1845, p. 404, § 16.]

14. Support by county.] § 14. Every county (except those in which the poor are supported by the towns) shall relieve and support all poor and indigent persons lawfully resident therein, except as herein otherwise provided.¹ [Revised Stat. 1845, p. 402, § 3.]

(1) The duty of supporting the paupers resident in the various counties of this State, is imposed upon such counties, and they are bound by all contracts for the support of such persons, when legally entered into by the proper officer. *Supervisors of Clay County v. Plant*, 42 Ill. R., 324.

The statute makes the respective counties liable for clothes furnished patients in the hospital, who are paupers and county charges. *Opinion Att'y Gen. Edsall*, May 3, 1875.

It is the duty of the counties to maintain all paupers in their counties, and it is immaterial whether they are found in cities, villages, or other parts of the county. *Opinion Att'y Gen. Edsall*, January 27, 1876.

There is no law in force authorizing a county to abandon the support of its poor, as a county, and adopt the system of separate support by the townships. Such change cannot be made without further legislation. *Opinion Att'y Gen. Edsall*, April 2, 1878.

15. Support by towns.] § 15. Every town in counties in which the poor are supported by the towns (as provided by law) shall relieve and support all poor and indigent persons lawfully resident therein, except as herein otherwise provided.

16. Removal of pauper not resident of county—Charges.] § 16. If any person shall become chargeable as a pauper in any county or town, who did not reside therein at the commencement of twelve months immediately preceding his becoming so chargeable, but did at that time, reside in some other county or town in this State, it shall be the duty of the county or town clerk, as the case may be, to send written notice by mail or otherwise, to the county clerk of the county in which the pauper so resided, or if he then resided in a town supporting its own poor, to the town clerk of such town, requesting the proper authorities of such county or town to remove said pauper forthwith, and to pay the expenses accrued and to accrue in taking care of the same; and such county or town, as the case may be, where such pauper resided at the commencement of the twelve months immediately preceding such person becoming chargeable as a pauper, shall pay to the county or town so taking care of such pauper, all reasonable charges for the same, and such amount may be recovered by suit in any court of competent jurisdiction.¹

If the proper public authorities fail to provide a comfortable support of paupers, after notice of their condition, individuals may do so, and recover of the public therefor. *Seagreaves v. City of Alton*, 13 Ill. R., 372.

Where a city voluntarily supports an insane person, having means of support, recovery cannot be had of the county therefor. *City of Alton v. Madison County*, 21 Ill. R., 115.

It has been held to be the duty of overseers of the poor to relieve a person found in their town in distress, although he may have property of his own, not available for his immediate relief. *Norridgewock v. Solon*, 49 Maine R., 385.

It has, in practice, always been supposed that when an overseer of the poor is unable to procure any contract for the support of a pauper, and no poor house has been provided, or in case of urgency, he may purchase necessary articles for the relief of the pauper on credit of the county, and thus render it liable for payment. *Supervisors of Clay County v. Plant*, 42 Ill. R., 325. See *Clinton v. Benton*, 49 Maine R., 550.

But where contracts for the support of paupers, or for articles furnished are extravagant or improvident, the board of supervisors may, no doubt, reduce the amount to be paid. *Supervisors of Clay County v. Plant*, 42 Ill. R., 324.

A county would probably not be liable for medical services rendered a pauper, unless ordered by the overseer of the poor, even where it was needed before such order could be obtained. *French v. Benton*, 44 N. Hamp. R., 28.

Where goods are furnished to persons as paupers, and the amount is sought to be recovered of the county, it should be shown that the persons to whom the goods were furnished were paupers, or the claim may properly be rejected. *Board of Supervisors v. Newell et al.*, 81 Ill. R., 387.

(1) *Form of Notice to Remove Non-resident Pauper.*

To the county clerk of ——— county, State of Illinois [or as the case may be]:

You are hereby notified that one A. B. has become chargeable as a pau-

[As amended by Act approved June 1, 1889. In force July 1, 1889. Laws 1889, p. 217.]

17. "Residence" defined.] § 17. The term "residence," mentioned in this Act, shall be taken and considered to mean the actual residence of the party, or the place where he was employed, or in case he was in no employment, then it shall be considered and held to be the place where he made it his home.² [Revised Stat. 1845, p. 404, § 15.]

18. Overseers in counties under township organization.] § 18. In counties under township organization the supervisors of the respective towns therein shall be *ex-officio* overseers of the poor of their towns: *Provided*, That for towns containing four thousand (4000) inhabitants or over, upon written request of said supervisors, the county board may appoint an overseer who is a resident of such town, fix his compensation and term of office, which shall not exceed the term of said board. The overseer so appointed shall execute to the county an official bond in a penal sum and with sureties to be fixed and approved by the county board, conditioned for the faithful discharge of his duties and the due application of all funds or property which shall come to his hands as such overseer: *Provided, further*, that this section shall not apply to counties containing over two

per in the town of ———, county of ———, and State of Illinois, he not residing therein at the commencement of thirty days immediately preceding his becoming so chargeable, but did at that time reside in [*state residence of the pauper*], the proper authorities of said county [*or town*] are therefore requested to remove said pauper forthwith, and pay the expenses accrued and to accrue in taking care of the same.

Dated at ———, this ——— day of ———, A. D. 19—.

C. D.

Town Clerk of the town of ———.

(2) The settlement or residence of a pauper is the place of his birth until he acquires another derivatively from his parents or by acts of his own. *Toby v. Madison*, 44 Penn. St. R. (3 Wright), 60.

After coming of age, a minor's removal elsewhere to reside, with no determinate intention of departure, will fix his domicile there; and it will not be altered by his afterwards going away temporarily with the intent to return. *Hart v. Lindsey*, 17 N. Hamp. R., 235.

A person having a legal settlement in one place, that settlement continues until another is acquired in the State. A settlement in another state or county will not change that acquired in this State, if the pauper returns to it. Where a person moved into a town, purchased property, resided two years, and then left the State, leaving his family behind him, the settlement and residence of the family is there fixed; and, if they become paupers, they are a charge upon such town or county. *Payne v. Town of Dunham*, 29 Ill. R., 129. See *Townsend v. Bitlerica*, 10 Mass. R., 411.

An illegitimate child retains the settlement which his mother had at his birth until he gains one in his own right, notwithstanding that she subsequently acquires another. *Hallowell v. Augusta*, 52 Maine R., 216.

Persons acting under the legal authority of others, or not capable of acting for themselves for the want of mind, do not lose or acquire a residence thereby. *Payne*

hundred thousand (200,000) inhabitants.¹ [As amended by Act approved May 24, 1877. In force July 1, 1877. Laws 1877, p. 143.]

19. Overseers in counties not under township organization.]

§ 19. In counties not under township organization, the county board shall designate some justice of the peace or some other suitable person in each precinct therein, who shall be overseer of the poor in such precinct. [Revised Stat. 1845, p. 403, § 5.]

20. Duties of overseers.] § 20.

The overseers of the poor shall have the care and oversight of all such persons in their town or precinct as are unable to earn a livelihood in consequence of any bodily infirmity, idiocy, lunacy or other unavoidable cause, and as are not supported by their relatives or at the county poor house, and shall see that they are suitably relieved, supported and employed, subject to such restrictions and regulations as may be prescribed by the county board, or in case the poor are supported by the town, subject to such restrictions and regulations as may be prescribed by such town. [Revised Stat. 1845, p. 403, § 6.]

21. Letting out support of poor.] § 21.

Where the county has not a poor house at which its poor are supported, the overseers of the poor of the respective towns or precincts shall commit the care of such poor persons as shall require to be supported by the county or by the town, to some moral and dis-

v. Town of Dunham, 29 Ill. R., 125; Town of Freeport v. Stephenson County, 41 Ill. R., 501. The residence or settlement of such a person is derived from his father or those having paramount control over him. Payne v. Town of Dunham, 29 Ill. R., 128.

A residence is not changed by absence for a temporary purpose only, if the person has sufficient intelligence to form and retain the intention of leaving for a temporary purpose and of returning; and he does return, in accordance with such intention. Corinth v. Bradford, 15 Maine R., 540. The rule that a domicile once acquired is presumed to continue until a subsequent change is shown, applies to cases of settlement of paupers. Chickopee v. Whately, 6 Allen R., (Mass.) 508.

The admissions of overseers of the poor in binding out, or their acts in providing support for a pauper, are not admissable in evidence against the town to prove the settlement of a person therein. New Bedford v. Taunton, 9 Allen (Mass.) 207; Dartmouth v. Lakeville, Id., 211.

By the division of a town, or the annexation of a portion of one to another, the pauper of the portion annexed does not lose his previous settlement or residence at the place where he had it when he became a public charge. Town of Freeport v. Stephenson County, 41 Ill. R., 495. See cases cited, Oxford v. Bethany, 15 Conn. R., 252; vice versa, 550; Brewer v. Epdington, 42 Maine R., 541. Yarmouth v. North Yarmouth, 44 Maine R., 353; Southridge v. Sharlton, 15 Mass. R., 248.

(1) Under the township organization law, it is not necessary that the justices of the peace of the town shall join with the overseer of the poor in ordering goods for the support of a pauper; he may act alone. The overseer of the poor alone is authorized to perform the duties of the office. Where he has entered into a contract for the support of a pauper, the liability of a county is thereby fixed, and its agents have no discretion, but must discharge the obligation. Nor can the chairman of the board of supervisors, in such a case, by notice or otherwise, abridge the powers of the overseer of the poor. He derives his powers from the law, and not from the supervisors. Supervisors of Clay County v. Plant, 42 Ill. R., 324.

creet householder in the town or precinct of sufficient ability to provide for them, and who will enter into a written contract with the county (or, if the poor are supported by the town, with the town), therefor upon such terms and conditions as may be approved by the county board or board of town auditors, as the case may be.¹ [Revised Stat. 1845, p. 403, § 6.]

22. Bond.] § 22. Every person to whom the care of the poor of any town or precinct shall be committed, shall execute to the county (or town, as the case may be), a bond, with such security as the county board (or board of town auditors, as the case may be), shall require, conditioned that he will treat every poor person committed to his care with humanity, and afford him the necessary attention and comforts of life suitable to his condition, and that he will fulfil his said agreement for the keep-

(1) *Form of Contract for Support of Poor Person.*

This contract, made and entered into this — day of —, A. D. 19—, between A. B., of —, and the town of —, in the county of —, and State of Illinois, witnesseth: That the said A. B., in consideration of the agreements herein on the part of said town of —, does hereby contract and agree to take care of one O. P., a poor person of said town, for and during the period of [*state the time*] from the date hereof, and during said time to support and provide for said O. P. in a good and comfortable manner, and to supply him with [*state the particulars of the contract as agreed upon*].

And the said town of — agrees, on condition of faithful performance of this contract by said A. B. on his part, as herein set forth, to pay to him [*state agreement on the part of the town*].

In witness whereof, said A. B. has hereunto set his hand and seal, and C. D., supervisor of said town, doth the like, on the part of said town, the day and year first above written.

A. B., [SEAL.]
C. D., [SEAL.]
Supervisor.

Form of Approval of Contract by Town Auditors.

We, the town auditors of the town of —, do hereby approve the above [*or within*] contract by A. B. with said town of —.

Dated this — day of —, A. D. 19—.

[*To be signed by the town auditors*].

The bond required to be given by the person contracting to support a pauper, as designed to indemnify the county or town against further expense in supporting the pauper, but not to absolve it from the duty. If the person agreeing to support the pauper fails through inability, or otherwise, to do so, the county or town must still afford the relief, and must look to the person with whom they contracted, and his securities, for indemnity for the loss. If the overseer fails to take a bond, and the person with whom he has contracted fails to support the pauper, he should then, if within his power, contract with some other person; or failing in that, he should furnish such articles as are adapted to the necessities of the pauper, and hire a suitable person, on the best terms he can, to help him. If the overseer should act in bad faith, or is guilty of fraud, and the county thereby becomes the loser, he would, it seems, be liable for the loss. *Supervisors of Clay County v. Plant*, 42 Ill. R., 325.

ing of such poor according to the true intent and meaning thereof.¹ [Revised Stat. 1845, p. 403, § 6.]

23. Temporary relief.] § 23. When any poor or indigent person does not require to be supported wholly by the county, the overseer of the poor may, subject to such limitations as may be prescribed by the county board, render him temporary relief without his being committed to the care of any such person, or being sent to the county poor house: *Provided*, that when the county shall furnish such poor or indigent person temporary relief, that the county shall recover from the relatives of such poor or indigent persons in an appropriate action as provided by this Act. [As amended by Act approved June 10, 1909. In force July 1, 1909. Laws 1909, p. 299.]

24. Aid to non-resident poor—Burial.] § 24. When any non-resident, or any person not coming within the definition of a pauper, of any county or town, shall fall sick or die, not having money or property to pay his board, nursing and medical aid

(1) *Form of Bond by Person Contracting to Take Care of Poor Person.*

Know all men by these presents, that we, A. B. and C. D., of ———, are held and firmly bound unto the town of ———, in the county of ———, and State of Illinois, in the penal sum of ——— dollars, which sum well and truly to be paid, we bind ourselves, our heirs, executors and administrators, jointly, severally and firmly by these presents. Sealed with our seals, this ——— day of ———, A. D. 19—.

The condition of the above obligation is such that, whereas, the above bounden A. B. has this day entered into written contract with the said town of ———, for the care and support of O. P., a poor person of said town, for and during the period of [*state the time*]. Now, if the said A. B. shall treat said poor person so committed to his care with humanity, and afford him the necessary attention and comforts of life suitable to his condition, and shall fulfill his said agreement for the keeping of such poor person, according to the true intent and meaning thereof, then this obligation to be void, otherwise to remain in full force and effect.

A. B., [SEAL.]

C. D., [SEAL.]

A contract with a county or town to properly feed and clothe every pauper sent to the contractor upon the order of the proper authorities, for a specified sum, the contractor can recover no more than that sum from the county or town for taking care of a lunatic pauper, although the trouble and expense was increased by reason of the insanity. The term pauper, under the statute, includes lunatic paupers. *County of Macoupin v. Edwards*, 15 Ill. R., 198.

A person not authorized by law for that purpose, cannot furnish board to one who is on the list of paupers, and an inmate of the poor-house, and have a claim therefor upon the county, whether he knew the party to be a pauper or not; and the overseers of the poor have no power to bind the county to the payment of such claim. *Board of Commissioners of Knox County v. Jones*, 7 Ind. R., 3.

Insane persons are not intended to be included in the pauper Act. An insane person having property adequate to his support, is not a pauper, and the county is not liable for the support of such person, nor is the city in which he resides liable for his support. *City of Alton v. County of Madison*, 21 Ill. R., 115.

or burial expenses, the overseer or overseers of the poor of the town or precinct in which he may be shall give, or cause to be given to him such assistance as they may deem necessary and proper, or cause him to be conveyed to his home, and if he shall die, cause him to be decently buried; and the county shall pay the reasonable expense thereof, which expenses of board, nursing, medical aid and burial expenses, may be recovered from the relatives of the said pauper, or from the county of which he is a resident, in an appropriate action. [As amended by Act approved June 10, 1909. In force July 1, 1909. Laws 1909, p. 299.

25. Report of overseers to county board.] § 25. In all counties in which the poor are not supported by the towns, the overseers of the poor of each town or precinct shall, at each regular session of the county board, and at such other times as the county board may require, make a full report of all their actings and doings, and return a list of all the poor in their respective towns or precincts, specifying the age, sex, condition and infirmities of each. [Revised Stat. 1845, p. 403, § 7.

26. Appropriations.] § 26. Upon such report being made, it shall be the duty of the county board to make the proper appropriations from the county treasury for the payment of the necessary expenses of such relief and support of the poor. [Revised Stat. 1845, p. 403, § 8.

27. Report of overseers to town auditors.] § 27. When the poor are supported by towns, the overseers of the poor shall make such report to the board of town auditors at their regular meeting, who shall audit all accounts and order the payment of such expenses from the town treasury.

28. Powers of county board.] § 28. The county board of any county in this State in which the poor are not supported by the towns thereof, as provided by law, shall have power—

1. To acquire, in the name of the county, by purchase, grant, gift or devise, a suitable tract or tracts of land upon which to erect and maintain a county poor house, and other necessary buildings in connection therewith, and for the establishment and

Counties are liable for a reasonable compensation, under the pauper Act, to one who renders medical aid to persons falling sick within the county, and having no means to pay for the same. The decision of the board of supervisors as to what is a proper allowance, is not conclusive; and if a proper amount is not allowed, an action may be maintained therefor. In such cases, persons falling sick with a contagious disease are not paupers within the meaning of the statute, and in an action to recover for medical aid so furnished to them, the liability of the county is not affected by the fact that a "poor-house" had been provided in the county for the reception of paupers. Such an establishment is not designed to receive persons affected with contagious disease, but only those who are technically paupers. *Supervisors of La Salle v. Reynolds*, 49 Ill. R., 186.

maintenance of a farm for the employment of the poor, and to erect and maintain such buildings and establish and maintain such farm; but they shall not expend for the purchase of any such land or the erection of any such building a sum exceeding \$3,000, without a two-thirds majority vote of all the members of the county board.

2. To receive, in the name of the county, gifts, devises and bequests to aid in the erection or maintenance of a poor house, or in the care and support of poor and indigent persons.

3. To make all proper rules and regulations for the management of the county poor house and poor farm, and of the inmates of the poor house.

4. To appoint a keeper of the poor house and all necessary agents and servants for the management and control of the poor house and farm, and prescribe their compensation and duties.

5. To appoint a county physician and prescribe his compensation and duties.

6. To appoint an agent to have the general supervision and charge of all matters in relation to the care and support of the poor, and prescribe his compensation and duties.

7. To make all proper and necessary appropriations out of the county treasury for the purchase of land and the erection of buildings, as authorized by this Act, and to defray the expenses necessary in the care and maintenance of the same, and for the support of the poor, and to cause an amount sufficient for said purposes to be levied upon the taxable property of the county, and collected as other taxes.

8. Upon a two-thirds majority of all the members of the board, to sell and dispose of the whole or any part of the poor farm of the county in such manner and upon such terms as they may deem most for the interests of the county, and to make and execute all necessary conveyances thereof, in the same manner as other conveyances of real estate may be made by a county. [Revised Stat. 1845, p. 404, § 17, 18, 19, 20, 23; Laws 1861, p. 180, § 1; Laws 1855, p. 132, § 1.

29. Account by overseer.] § 29. The overseers of the poor in each town in counties under township organization (whether the poor are supported by townships or otherwise), and of each precinct in counties not under township organization, shall keep an accurate account, showing the name of every person relieved or supported in their town or precinct; the place of his birth; the manner in which he is relieved or supported, whether in whole or in part at the expense of the county or town; the amount of the aid furnished; whether the dependency was on

account of idiocy, lunacy, intemperance, or other cause, stating the cause. And on or before the first meeting of the county board of September in each year, file a copy of such account with the county clerk of their county.

30. Account by county agent.] § 30. When the county agent shall furnish relief to any of the poor of the county, he shall keep a like account, and at the same time in each year file a copy of the same with the county clerk of his county.

31. Account by keeper of poor house.] § 31. The keeper of the poor house shall also keep an account, showing the name of each person admitted to the county poor house; the time of his admission and discharge; the place of his birth; whether his dependence resulted from idiocy, lunacy, intemperance, or other cause, stating the cause; and shall, at the same time, in each year, file with the county clerk of his county a copy of the same, together with a statement showing the average number of persons kept in the poor house each month during the year.

32. Neglect to report.] § 32. If any overseer of the poor, county agent, or keeper of the poor house, shall fail or neglect to make such a report at the time required by this Act, he shall for each offense, forfeit the sum of \$25, to be recovered in the name of the county, in any court of competent jurisdiction.

33. Poor to be kept at poor house.] § 33. When any county shall have provided a suitable poor house for the accommodation of the poor of the county, and the same is ready for the reception and care of the poor, all poor persons requiring the care and support of the county shall be cared for and supported at such poor house, and not in the several towns and precincts in the county, except when they cannot be received in the poor house, and except as herein otherwise provided. [Revised Stat. 1845, p. 404, § 21.]

34. Curative.] § 34. In all cases where counties have voted for the support of the paupers of such counties by townships, and the said counties have acted in good faith for the term of five years under the authority of said vote, in the support of paupers by townships, the acts of said counties and the townships thereof shall be deemed legal and binding, notwithstanding any informality in the time or manner of holding the said elections, or in recording or preserving the records of the same. [Laws 1871-2, p. 596, § 1.]

35. Township support—How abandoned.] § 35. Upon the petition of not less than twenty legal voters residing in each one

of a majority of the towns in any county which shall have adopted the mode of supporting paupers by townships, the county board shall cause to be submitted to the voters of the county, at the next general election for town officers, the question of the continuance of that mode of supporting the poor. The ballots shall be: "For township support of paupers," or "Against township support of paupers," and notices of the election shall be given and the votes canvassed and returns made the same as for county officers. If it shall appear by the returns of said election that a majority of the votes cast on that question at said election are against township support of paupers, then that mode of supporting the poor shall cease, and thereafter the poor shall be supported in the same manner as provided by law in counties not having adopted the support of the poor by townships; otherwise the poor of such county shall be supported by townships as heretofore provided. Said question shall not be submitted oftener than once in five years.

RESIDENCE FOR PURPOSE OF VOTING.

AN ACT to prevent illegal voting by paupers and others in this State.
[Approved May 25, 1877. In force July 1, 1877. Laws 1877, p. 144.]

1. Paupers—Residence—Voting.

1. **Paupers—Residence—Voting.] § 1.** *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That no pauper or inmate of any county poor-house, insane asylum or hospital in this State, shall by virtue of his abode at such county poor-house, insane asylum or hospital be deemed a resident or legal voter in the town, city, village or election district or precinct in which such poor-house, insane asylum or hospital may be situated; but every such person shall be deemed a resident of the town, city, village or election district or precinct in which he resided next prior to becoming an inmate of such county poor-house, insane asylum or hospital.¹

SEPARATE SUPPORT—POOR HOUSE.

AN ACT to provide for the establishment and maintenance of county poor-houses in counties where the separate support of paupers has been adopted. [Approved May 23, 1877. In force July 1, 1877. Laws 1877, p. 144.]

1. Separate support of paupers.
2. Rate per day.
3. Each town.
4. When town fails to support.
5. Reports.

(1) A person does not forfeit his residence in a town or precinct in which he was a voter merely by becoming a county charge and an inmate of the poor-house. *Dale v. Irwin*, 28 Ill. R., 170.

1. Separate support of paupers.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That the county board of any county that has heretofore adopted, or may hereafter adopt the separate support of paupers may, whenever it shall see fit so to do, establish and maintain a county poor house, and for this purpose shall have all the power given to county boards by section twenty-eight (28) of an Act entitled "An Act to revise the Law in relation to Paupers," of the Revised Statutes of 1874.

2. Rate per day.] § 2. The county board of any such county, whenever any such poor house is established, may fix the rate per day or per week, that each town shall pay for the support and maintenance in such poor-house for each of their respective paupers, which shall be paid to the county agent in charge of the poor-house, or otherwise, as provided by the county board.

3. Each town.] § 3. Each town of such counties may then have its paupers supported in such poor-house, by paying said rate, or may provide for them otherwise, as it shall deem best.

4. When town fails to support.] § 4. The county agent in charge of said poor-house shall not receive any paupers except upon the order of the overseer of the poor of the town to which paupers belong, and should any town fail to pay for the support of its paupers, the county agent may be authorized by the county board to return such paupers to the town to which he or she may belong, or the county may sue for and recover the amount due for taking care of such paupers.

5. Reports.] § 5. The county agent shall, as often as required by the county board, make full and complete reports, under oath, of all moneys received and expended by him, as such county agent, and shall furnish such other information in relation to the poor-house and farm as may be required of him.

TUITION OF PAUPER CHILDREN.

AN ACT requiring county boards to pay for the tuition of pauper children kept in poor-houses. [Approved May 24, 1877. In force July 1, 1877. Laws 1877, p. 145.]

1. Tuition of pauper children.
2. To whom paid.

1. Tuition of pauper children.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That county boards shall order to be paid out of the county

treasury a just and equitable sum of money for the tuition of pauper children residing in the county poor house, and attending any district school in this State.

2. To whom paid.] § 2. Said money shall be paid to the township treasurer of the township in which said district is situated, and said treasurer shall place said money to the credit of the district where said pauper children attend school.

CHILDREN ON POOR FARMS.

AN ACT to authorize county judges to release certain children from custody of poor-houses and to make contract with persons for their support, maintenance and education. [Approved June 21, 1895. In force July 1, 1895. Laws 1895, p. 177.]

1. Children on Poor Farms—Jurisdiction of County Judge—Home for such children.

1. Children on poor farms—Jurisdiction of County Judge—Home for such children.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That the county judges of the several counties of this State be and they are hereby authorized to make such orders as shall be necessary to release from the custody of the keepers of the poor farms in their respective counties all children confined therein under the age of fourteen (14) years, who have no parents or legal guardians living, whenever the said judge can, without expense to the county, through the agency of any person or charitable society of this State, secure a good home for said child; and the said judge is hereby authorized, and it is made his duty to enter

NOTE.—A county cannot relieve itself from liability to support paupers, by refusing or neglecting to make any rules and regulations on the subject. *County of Perry v. DuQuoin*, 99 Ill. R., 479. Where the county board have employed a county physician, another physician rendering medical services to a poor person, though by order of the overseer of the poor, cannot recover therefor of the county. *County of DeWitt v. Wright*, 91 Ill. R., 529.

The legislature can impose the support of paupers upon towns, and it is not necessary that this question be submitted to a vote of the people in the county. *Town of Fox v. Town of Kendall*, 97 Ill. R., 72; *County of Perry v. DuQuoin*, 99 Ill. R., 479. To make a person a charge upon a town as a pauper, it is necessary that he should have resided in such town within six months before becoming a pauper. *Town of Fox v. Town of Kendall*, 97 Ill. R., 72. Persons afflicted with a contagious disease, who cannot be sent to the poor-house, but require medical assistance and care, come within the class mentioned in § 24 as residents not coming within the definition of paupers, and a county is liable for their care. The section of the law relating to paupers, which provides for giving assistance to persons falling sick, not having money to pay for board, medical aid, etc., refers to two classes, non-residents and residents not coming within the definition of paupers. That part authorizing the sending of such persons to their homes, applies only to non-residents of the county. *County of Perry v. DuQuoin*, 99 Ill. R., 479.

To hold a town liable for the support of a pauper who had resided there within six months before becoming a pauper in another town, notice of the fact, to the town sought to be charged, should be given within a reasonable time. *Town of Fox v. Town of Kendall*, 97 Ill. R., 72. The overseer of the poor of a town cannot render temporary relief to a poor person not required to be wholly supported by the county, contrary to the regulations of the county board. *County of DeWitt v. Wright*, 91 Ill. R., 529.

into a contract on behalf of such child or children with the person who agrees to take such child, which contract shall provide that such child shall be clothed, maintained and schooled in the common schools of the State until he, if a male child, is twenty-one years old, and, if a female, until she is eighteen years of age.

DIVISION VI.

TOWNSHIP INSURANCE COMPANIES.

AN ACT to revise the law in relation to township insurance companies. [Approved March 24, 1874. In force July 1, 1874. Revised Stat. chap. 73.]

1. Who may form.
2. How formed.
3. Directors—election of.
4. President—Secretary—Treasurer.
5. Bonds.
6. Corporate powers.
7. Members.
8. Manner of insuring.
9. Risks classified.
10. When company not to insure.
11. Notice of loss—Adjustment—Expense.
12. When president may borrow money—Assessments.
13. Notice of assessment.
14. Suits.
15. Annual statement.
16. Withdrawal from company.
17. Report to auditor—Certificate—Fees.
18. Dissolution—Amended charter.
19. Companies formed under act of 1872.

1. **Who may form.]** § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That any number of persons, not less than twenty-five, residing in any congressional or political township, or in one or more adjoining congressional or political townships in this State, not exceeding twelve in number, and without regard to county lines, who collectively shall own property of not less than fifty thousand dollars (\$50,000) in value, which they desire to have insured, may form an incorporated company for the purpose of mutual insurance against loss or damage by fire or lightning. [As amended by Act approved June 1, 1889. In force July 1, 1889. Laws 1889, p. 187.]

2. How formed.] § 2. Such persons shall file with the auditor of public accounts a declaration of their intention to form a company for the purposes expressed in the preceding section, which declaration shall be signed by all the corporators and shall contain a copy of the charter proposed to be adopted by them. Such charter shall set forth the name of the corporation, which shall embrace the name of the township in which the business office of such company is to be located and the intended duration of the company, and if it is found conformable to this Act and not inconsistent with the laws and constitution of this State, the auditor shall thereupon deliver to such persons a certified copy of the charter, which, on being filed in the office of the county clerk of the county where the office of such company is to be located, shall be their authority to organize and commence business. Such certified copy of the charter may be used in evidence for or against said company, with the same effect as the original: *Provided*, that such charter so obtained shall be subject to control of and modification by the General Assembly.¹

3. Directors—Election of.] § 3. The number of directors shall not be less than nine nor more than fifteen, a majority of whom shall constitute a quorum to do business, to be elected from the corporators by ballot, of whom one-third shall be elected for one year, one-third for two years and one-third for three years, until their successors are elected and qualified. At all subsequent elections, except to fill vacancies, one-third of

(1) *Form of Declaration of Intention to Form Company.*

We, the undersigned, residing in the political township of [insert name of township as known, for township organization. If it is merely a congressional township and not under township organization, then say, Congressional township No. —, giving the number thereof according to the description of the U. S. government], in the county of —, and State of Illinois, [or of the political or congressional township of —, [describing them as above] being adjoining townships in the State of Illinois, not exceeding six in number [or as the case may be], who collectively own property of not less than fifty thousand dollars in value, which we desire to have insured, hereby declare our intention to form an incorporated company for the purpose of mutual insurance against loss or damage by fire or lightning, according to the statute in such case made and provided. The following is a copy of the charter proposed to be adopted by us for the purpose aforesaid:

[Here insert copy of charter.]

In testimony whereof we have hereunto subscribed our names, this — day of —, A. D. 19—.

[Signed by all the corporators.]

The form of charter contemplated by this Act will be drawn to suit the wishes of the corporators in each case. The following is given as a general form of charter, which may be varied to suit circumstances, and which is designed to be inserted in the foregoing form of declaration at the place therein indicated,

said board of directors shall be elected for three years, said election to be held at the annual meeting of the company, which shall be on the second Tuesday in January in each year: *Provided*, that any company now incorporated and doing business under this Act may at any time change their mode of electing their board of directors, at an annual meeting, so as to be in conformity with this Act. In the election of the first board of directors each corporator shall be entitled to one vote. At every subsequent election every person insured shall be entitled to as many votes as there are directors to be elected, and an equal additional number for each five hundred dollars (\$500) that he may be insured in the company, and may cast the same in person or by proxy, distributing them among the same or less number of directors to be elected, or accumulating them upon one candidate, as he may think fit: *Provided*, that any twelve members of any company now incorporated and doing business under this Act, may at any time petition the secretary of the company to submit the question to the members thereof for or against abolishing proxy voting. Upon the receipt of such petition the secretary of the company shall give notice in writing to every member thereof, at least ten days before the election, that at the next annual meeting of the company the question will be submitted to them to vote for or against abolishing proxy voting, which vote shall be by ballot. If the majority of votes cast at such an election are in favor of abolishing proxy voting, then at all subsequent [elections] all votes shall be cast in person. [As amended by Act approved May 14, 1903. In force July 1, 1903. Laws 1903, p. 222.]

Form of Charter for Township Mutual Insurance Companies.

We, E. B., A. T. and H. P. [give the names of all the corporators], residing in the township of ——— [insert as in the form of declaration of intention to organize], in the county of ———, and State of Illinois, do propose the following as the charter adopted by us, for the purpose of a mutual insurance company, pursuant to the statute in such cases made and provided.

1. The name of said company shall be The ——— Township Mutual Insurance Company, and its business office shall be at ———, in said township of ———, in the county of ———, and State of Illinois.

2. The intended duration of said company shall be ——— years.

3. The object of said company shall be to engage in and carry on the business of a mutual insurance against loss or damage by fire or lightning within the limits of the township [or townships] above named.

4. Said company shall have and possess all the powers and authority prescribed by an Act of the General Assembly of the State of Illinois, in relation to township insurance companies.

In witness whereof we have hereunto set our hands, this ——— day of ———, A. D. 19—.

[Signed by all the corporators.]

4. President, treasurer and secretary.] § 4. The directors shall elect from their number a president and a treasurer, and shall also elect a secretary, who may or may not be a member of the company, all of whom shall hold their office for one year, and until their successors are elected and qualified.

5. Bonds.] § 5. The treasurer and secretary shall each give bonds to the company for the faithful performance of their duties, in such amounts as shall be prescribed by the board of directors.

6. Corporate powers.] § 6. Such corporation and its directors shall possess the usual powers and be subject to the usual duties of corporations and directors thereof, and may make such by-laws, not inconsistent with the constitution or laws of this State, as may be deemed necessary for the management of its affairs, in accordance with the provisions of this Act; also to prescribe the duties of its officers and fix their compensation, and to alter and amend its by-laws when necessary.

7. Members.] § 7. Any person owning property in the district for which any such company is formed, may become a member of such company by insuring therein, and shall be entitled to all the rights and privileges appertaining thereto; but a person not residing within the district for which the company is formed shall not become a director of such company. [As amended by Act approved June 18, 1883. In force July 1, 1883. Laws 1883, p. 104.

8. Manner of insuring.] § 8. Such companies may issue policies only on detached dwellings, barns (except livery, boarding and hotel barns), and other farm buildings, school houses and churches, and such property as may be properly contained therein, also other property on the premises and owned by the insured, also live stock (hay and grain in the stack), on the premises of the insured and anywhere in the territory of the company, for any time not exceeding five years and not to extend beyond the limited duration of the charter, and for an amount not to exceed six thousand dollars on any one risk. Said policies may cover loss of or damage to live stock, harness, and vehicles, temporarily taken from the territory of the company: *Provided*, said live stock, harness and vehicles be not removed to exceed twenty-five miles from the territory of the company. All persons so insured shall give their obligations to the company binding themselves, their heirs and assigns, to pay their *pro rata* share to the company of the necessary expenses, and of all losses

by fire or lightning, which may be sustained by any member thereof during the time for which their respective policies are written, and they shall also, at the time of effecting the insurance, pay such percentage in cash and such other charge as may be required by the rules and by-laws of the company. [As amended by Act approved May 15, 1909. In force July 1, 1909. Laws 1909, p. 258.]

9. Risks classified.] § 9. Any such company may classify the property insured therein at the time of issuing policies thereon, under different rates, corresponding as nearly as may be to the greater or less risk from fire or lightning, and loss, which may attach to each several building insured.

10. When company not to insure.] § 10. No such company shall insure any property beyond the limits of the district comprised in the formation of the company, nor shall they insure any property within the limits of any city containing over 12,000 inhabitants at the time of the organization of such company.

11. Adjustment of loss.] § 11. Every member of such Company who may sustain loss or damage by fire or lightning shall immediately notify the president of such company, or in his absence, the secretary thereof, stating the amount of damage or loss claimed, and if not more than five hundred (\$500) then the president and secretary shall proceed to ascertain the amount of such damage or loss, and proceed to adjust the same. If the claim for damage or loss shall be an amount greater than five hundred dollars (\$500) then the president of such company, or in case of his absence, then the secretary thereof, shall forthwith appoint a committee of not less than three (3) disinterested members of the company to ascertain the amount of such damage or loss, and the committee thus appointed shall report the amount of such damage or loss to the directors of such company, who shall be convened by the president, or in his absence, by the secretary, and the directors shall approve or reject the report of such committee. If, in either case, there is a failure of the parties to agree upon the amount of such damage or loss, or the directors reject the report of the committee, the claimant shall appeal to the judge of the county court of the county in which the office of the company is located, whose duty it shall be to appoint three (3) persons as a committee of reference, who shall have full authority to examine witnesses, and to determine all matters in dispute, and shall make an award in writing to the president of such company and such award shall be final. The pay of said committee shall be two dollars (\$2) per day

for each days' service so rendered, and four (4) cents for each mile necessarily traversed in the discharge of their duties, which shall be paid by the claimant, unless the award of said committee shall exceed the sum offered by the company in liquidation of such loss or damage, in which case said expenses shall be paid by the company. All adjusting committees shall have the power to administer oaths, examine witnesses and take acknowledgements. [As amended by Act approved May 11, 1901. In force July 1, 1901. Laws 1901, p. 218.

12. When president may borrow money—Assessments.]
§ 12. Whenever the amount of any loss shall have been ascertained which exceeds in amount the cash funds of the company, the president shall have power to borrow money not to exceed one-tenth of one per cent of all the property insured with which to pay said loss, and when the amount of said loss shall exceed one-tenth of one per cent of all property insured, the president shall convene the directors of said company, who shall make an assessment upon all the property to the amount for which each several piece of property is insured, taken in connection with the rate of premium under which it may be classified: *Provided*, That if there be no quorum present, the secretary shall enter the fact upon his journal and the names of the directors present, whereupon the president, secretary and treasurer shall proceed to estimate the rate per cent necessary to cover the loss and expense thereby incurred, and assess the same upon all the insured members of the said company, which assessment shall be valid and shall be collected in the same way as though it had been made by the board of directors, and at the time when any assessment is made, the assessment shall be made large enough to pay all losses and all money borrowed. [As amended by Act approved May 11, 1901. In force July 1, 1901. Laws 1901, p. 219.

13. Notice of assessment.] § 13. It shall be the duty of the president, whenever such assessment shall have been made, to immediately notify every person composing such company, personally, by an agent or by letter sent to his usual post office address, of the amount of such loss, and the sum due from him as his share thereof, and of the time when and to whom such payment is to be made; but such time shall not be less than thirty nor more than ninety days from the date of such notice.

14. Suits.] § 14. Suits at law may be brought against any member of such company who shall neglect or refuse to pay any assessment made upon him by the provisions of this Act; and the directors of any company so formed, who shall willfully refuse

or neglect to perform the duties imposed upon them by the provisions of this Act, shall be liable, in their individual capacity, to the person sustaining such loss. Suits at law may also be brought and maintained against any such company, by members thereof, for losses sustained, if payment is withheld after such losses have become due.

15. Annual statement.] § 15. It shall be the duty of the secretary to prepare an annual statement, showing the condition of such company on the thirty-first day of December, and present the same at the annual meeting.

16. Withdrawal from company.] § 16. Any member of such company may withdraw therefrom by surrendering his policy for cancellation, at any time while the company continues the business for which it was organized, by giving notice in writing to the Secretary thereof, and paying his share of all claims then existing against said company: *Provided*, that by the withdrawal of any such member, the number of the members remaining in the company shall not be reduced below the original number of corporators, or at that the assets will not be reduced below the amount at the time of the organization: *Provided, further*, that the company shall have power to cancel or terminate any policy by giving the insured notice to that effect.

17. Report to auditor—Certificate—Fees.] § 17. It shall be the duty of the president and secretary of every such company on the first day of January of each year, or within one month thereafter, to prepare, under their own oath, and transmit to the auditor of public accounts, a statement of the condition of the company on the thirty-first day of December then next preceding, in such form as the auditor may direct. If, upon examination, he is of the opinion that such company is doing business correctly, in accordance with the provisions of this Act, he shall thereupon furnish the company his certificate, which shall be deemed authority to continue business the ensuing year, subject, however, to subsequent provisions of this Act. For such examination and certificate the company shall pay \$1. Each company shall pay, at the time of organization, \$10 for the auditor's services, all of which shall be paid into the State treasury and applied to the insurance fund.¹

18. Dissolution—Amended charter.] § 18. Whenever any township insurance company, incorporated under the laws of this State shall at any time within five years previous to the termina-

(1) The auditor could in a proper case terminate the power of the company under the above section, to continue business, by simply refusing to grant the certificate of renewal. Opinion of Att'y Gen'l Edsall.

tion of its charter, decide, by a majority of two-thirds of its directors to extend the period of its corporate existence, or to otherwise amend its charter, the president and secretary of such company shall cause to be filed with the Auditor of Public Accounts a statement under the seal of said company, and by them duly attested, stating the fact of the decision of such company to so extend the period of its corporate existence, or to amend its charter; or both, stating particularly the time of such extension and the nature of such amendments, and if it is found conformable to the provisions of this Act, and not inconsistent with the laws and Constitution of this State, the Auditor shall issue an amended charter, in accordance with the vote of the directors of such company, and deliver a certified copy thereof to the said company, and upon the same being filed in the office of the clerk of the county in which the principal office of such company is located by such company, the period of its corporate existence shall be so extended, and it shall be authorized to transact any and all business contemplated by such amendments: *Provided, however,* that such company and its charter, when so amended shall at all times be subject to control and modification by the General Assembly, and to all laws of this State applicable thereto; and all companies organized under this Act may be proceeded against and dissolved in the same manner and upon the same conditions as provided in case of other insurance companies incorporated under the laws of this State. [As amended by Act approved June 4, 1889. In force July 1, 1889. Laws 1889, p. 188.

19. Companies formed under Act of 1872.] § 16. Any township insurance company formed under an Act entitled, "An Act to incorporate and govern mutual fire insurance companies in townships," approved April 3, 1872, may, with the written consent of two-thirds of the members, accept the provision of this Act, and thereupon shall be governed by its provision. Before any such company shall be entitled to the benefits thereof, the directors, or a majority of them, shall file with the Auditor of Public Accounts the declaration provided for in Section 2 of this Act.

A mutual fire insurance company organized under a statute which empowers it to raise money by assessment for the payment of losses only has no power to make an assessment to create a surplus fund for the payment of future losses. *Farmers' Mut. Ins. Co. of Palmyra v. Knight*, 162 Ill., 470.

An assessment made by the managers of an incorporated mutual fire insurance company largely in excess of an amount required to pay a loss, for which they are authorized by law to make an assessment, is void and may be disregarded by the members. *Id.*

Violation of the statute by the managers of a mutual fire insurance company, in making an assessment to provide for future losses, and payment of such assessment by a policyholder, will not estop the latter from questioning the validity of another such assessment. *Id.*

ADMISSION OF TERRITORY.

AN ACT to give Contiguous Territory the right to become incorporated with Township Insurance Companies. [Approved May 31, 1881. In force July 1, 1881. Laws 1881, p. 101.]

- 20. Organization.
- 21. Contiguous territory.
- 22. Receiving other township.
- 23. Township received.

20. **Organization.]** § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That Section 1 of an Act entitled, "An Act to give contiguous territory the right to become incorporated with township insurance companies," approved May 31, 1881, in force July 1, 1881, be and the same is hereby amended to read as follows: That it shall be lawful for any township insurance company, already organized, or hereafter to be organized, having less than 25 political townships in its organization, to accept or receive into its said organization one or more adjoining congressional or political townships: *Provided, however,* such organization shall not in any event, embrace more than 25 such townships. [As amended by Act approved May 16, 1905. In force July 1, 1905. Laws 1905, p. 304.]

21. **Contiguous territory.]** § 2. Any number of persons, not less than ten, who, collectively, shall own property of not less than \$15,000 in value, which they desire to have insured, residing in any congressional or political township, which shall not already be in some township insurance company, may petition any township insurance company, already organized (to which said township may be contiguous) praying to have said township added to and embraced in said township insurance company. Said petition shall be accompanied by the written consent of a full majority of the then policy holders in said company, owning not less than two-thirds of the insurance represented by the policies of said company, consenting to the prayer of said petition. Upon the receipt of such petition, accompanied by such consent, the board of directors of said company may, by vote, accept and receive into said organization such township so petitioning. If such township so petitioning shall be so received and accepted by such township insurance organization, the secretary of such township insurance company shall at once so notify the Auditor of Public Accounts, stating the name of the township so added and the date the acceptance was so made.

22. Receiving other township.] § 3. The accepting or receiving of any such township, as aforesaid, shall in no way impair the obligations of said township insurance company, or that of the policy holders or members thereof.

23. Township received.] § 4. From and after the date of such acceptance by such township insurance company, said township so received shall, to all intents and purposes be a part and parcel of such township insurance company, the same as though embraced therein in its original organization.

CONSOLIDATION OF TOWNSHIP INSURANCE COMPANIES.

AN ACT to authorize the consolidation of township insurance companies.
[Approved June 21, 1895. In force July 1, 1895. Laws 1895, p. 177.]

24. Consolidation.

25. How consolidation may be made.

26. How consolidation effected.

24. Consolidation.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That section 1 of an Act entitled "An Act to authorize the consolidation of township insurance companies," approved June 21, 1895, and in force July 1, 1895, be and the same is hereby amended to read as follows: That it shall be lawful for any number of township mutual fire insurance companies, already organized or hereafter to be organized, not exceeding twenty-five political townships of contiguous territory, to consolidate the same into one company. [As amended by Act approved May 16, 1905. In force July 1, 1905. Laws 1905, p. 305.]

25. How consolidation may be made.] § 2. Such consolidation may be made by petition of the policy holders of the several companies representing a majority of the amount of insurance carried by each company to the board of directors of the several companies respectively.

26. How consolidation effected.] § 3. Upon receipt of such petition, the board of directors of the several companies shall meet, and by a majority vote of the board of directors of each of the several companies, consolidate the several companies into one, assuming the name of either of the companies so consolidated, which company so named, under its existing charter, shall assume all the outstanding unexpired policies of the several companies, agreeable to the laws and regulations in force for the organization of township insurance companies, and subject to the constitution and by-laws of such company made in pursuance thereof.

DIVISION VII.

ANIMALS.

DOG AND SHEEP ACT.

AN ACT to indemnify the owners of sheep in cases of damages committed by dogs. [Approved May 29, 1879. In force July 1, 1879. Laws 1879, p. 54.]

1. Assessor to make list.
2. License fee.
3. License fund—how paid out.
4. Payment not to bar action, when.
5. Proof of damages—Proceedings before supervisor—Record to be left—When owner solvent.
6. Witness fees—Repeal.
7. Meaning of the word “dog.”

1. **Assessor to make list.] § 1.** *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That each county and township assessor in this State, when making the assessment, shall annually make a list of the names of all persons who own or keep a dog or dogs, and set opposite the name of such owner or keeper the number of dogs he or she has in his or her possession, or that is or are kept on his or her premises; which list shall be returned by such assessor to the county clerk of the county in which said list is taken as soon as the assessment is completed.

2. **License fee.] § 2.** The county clerk shall charge upon the collector's book against the name of each person reported and returned as the owner or keeper of a dog or dogs, as a license fee, the sum of one dollar for each dog owned or kept by such person, which fee shall be collected at the same time, and in the same manner as taxes upon personal property. In counties not under township organization, the collector shall pay the amount received from the licenses aforesaid to the treasurer of his county, and in counties under township organization the sum so collected in each town, shall be paid by the collector to the supervisor of his town. *Provided*, such supervisor shall not be required to give any new bond for such license fee, but such supervisor and his sureties shall be liable on his original bond as supervisor in the same manner and to the same extent as they now are for other moneys received by such supervisor by virtue of his office. [As

amended by Act approved June 16, 1891. In force July 1, 1891. Laws 1891, p. 4.

3. License fund—How paid out.] § 3. It shall be the duty of the county treasurers and supervisors, having the custody of the funds collected as license fees as aforesaid, to pay the same out in the manner following:

First—By such county treasurer to the owners of sheep in their respective counties, and by the supervisors to the owners of sheep in their respective towns, who shall make proof to them before the first Monday of March in each year, of loss or injury to sheep by dogs, other than their own, the full amount of the loss or injury so proved, if there are funds sufficient to pay the same; if there be not sufficient funds to pay such loss or injury in full, then the owners of sheep so sustaining injury as aforesaid, and making proof thereof as in this Act provided, shall be paid out of such fund in proportion to his loss or injury, on his or her pro rata share thereof.

Second—Three years after the collection of such license fund, if there shall remain in the hands of the town supervisor in counties under township organization, an unexpended balance, such balance shall annually be turned into the general fund of the county, or township, as the case may be, and shall be used for the same purposes as money raised by general taxation.

Provided, that in townships in which there are no sheep, as shown by the assessor's return for that year, the license fund collected for the preceding year shall be turned into the general fund of the township on the first day of April. [As amended by Act approved April 21, 1899. In force July 1, 1899. Laws 1899, p. 2.

4. Payment not to bar action, when.] § 4. The payment to any owner of sheep of money for damages resulting from loss or injury to his or her sheep, shall not be a bar to an action by such owner against the owner or keeper of the dog or dogs committing such injury or causing such loss, for the recovery of damages therefor. The court or jury before whom such action is tried shall ascertain from evidence what portion, if any, of the damages sought to be recovered in such action has been paid to the plaintiff in such action by the county treasurer or supervisor of the proper county or town; and in case the plaintiff in such action recovers damages, the court shall enter judgment against the defendant, in the name of the plaintiff, for the use of the proper county or town as the case may be, for the amount which the plaintiff has received on account of such damages from

the county treasurer or supervisor of the proper county or town, if such recovery shall equal or exceed the amount so received by such plaintiff from the county treasurer, or town supervisor of his county or town; and the residue of such recovery, if any there be, shall be entered in the name of the plaintiff in such action to his own use; if the amount of the recovery in such action shall not equal the amount previously paid to the plaintiff on account of such damages by the county treasurer or the town supervisor of the proper county or town, then the judgment shall be entered as aforesaid, for the use of such county or town, for the full amount of such recovery. Writs of execution issued upon such judgments shall show on their face what portion of the judgment is to be paid to the proper county or town, and what portion is to be paid to the plaintiff in such action, and the judgment when collected shall be paid over to the parties entitled thereto, in their proper proportions.

5. Proof of damages—Proceedings before supervisor—Record to be kept—When owner solvent.] § 5. No person having sheep killed as aforesaid shall be entitled to receive any portion of the fund herein provided for unless he appear before the supervisor of the town in which the sheep are killed or injured or before a magistrate in counties not under township organization, within not less than ten nor more than forty days after the sheep were killed or injured, and make affidavit stating the number of sheep killed or injured, the amount of damages and owner or owners of dog or dogs if known.

All damages shall be proven by not less than two (2) witnesses, who shall be freeholders of the county, and such supervisors or magistrates are hereby authorized to administer oaths in such cases, and shall keep a record in each case of the names of owners and the amount of damage proven and the number of sheep killed or injured. And in case the owner of the dog or dogs is solvent, the county or town, as the case may be, shall not pay such damages out of such fund.

Provided, the damages allowed in no event shall exceed five dollars per head for such sheep killed or injured.¹ [As amended by Act approved April 21, 1899. In force July 1, 1899. Laws 1899, p. 2.]

(1) *Form of Affidavit by Owner of Sheep.*

State of Illinois, }
 _____ County, } ss:

A. B. being duly sworn on oath, deposes and says, that on the ____ day of _____, A. D. 19—, (ten) sheep owned by him, in the town of _____, were killed [*or injured*] by a dog, other than his own, but owned [*or kept*] by C. D.; that said C. D. is insolvent; that affiant has received no compensa-

6. **Witness fees—Repeal.]** § 6. The supervisor, or County Treasurer, as the case may be, shall allow not to exceed fifty cents to each witness, which shall be paid out of the fund created by this Act prior to its disposition by the third section of this Act. All Acts or parts of Acts inconsistent with these amendments are hereby repealed.² [As amended by Act approved May 29, 1897. In force July 1, 1897. Laws 1897, p. 9.

7. **Meaning of "Dog."]** § 9. The word "dog," as used in this Act shall be held and construed to mean all animals of the canine species, both male and female.

tion from the owner of said dog, or from any other person for his damages sustained aforesaid. A. B.

Subscribed and sworn to before me this }
—— day of ——, A. D. 19—. }
P. K., N. Pub. }

If the owner of the dog or dogs is unknown, the affidavit may be in the following form:

A. B. being duly sworn on oath, deposes and says, that on the —— day of ——, A. D. 19—, [number] sheep owned by him were killed [or injured] by a dog, other than his own, the owner [or keeper] of which is unknown to him [or her].

(2) *Form of Record to be Kept by Supervisor.*

State of Illinois, }
—— County, } No. ——
Township of —— } Before ——, Supervisor.

In the matter of the claim of —— for damages for the killing or injuring of sheep by —— owned, by a dog or dogs belonging to ——, being insolvent, or to some person or persons unknown.

Affidavit of claimant-owner filed the —— day of ——, A. D. 19—.

Number of sheep killed ——
Number of sheep injured ——
Amount of damages proved..... \$——
Amount of witness fees..... \$——

____ Supervisor.

Received damages, \$—— —— Owner.
Received witness fee, \$—— —— Witness.
Received witness fee, \$—— —— Witness.

IN RELATION TO DOMESTIC ANIMALS.

AN ACT in relation to domestic animals running at large within the State of Illinois. [Approved June 21, 1895. In force July 1, 1895. Laws 1895, p. 4.]

8. Unlawful to run at large.
9. What deemed a running at large.
10. Pound—poundmaster—fees—duties.
11. Poundmaster to enforce act—penalty.
12. What counties or townships not affected by this Act.
13. Repeal.

8. Unlawful to run at large.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That hereafter it shall be unlawful for any animal of the species of horse, ass, mule, cattle, sheep, goat, swine or geese to run at large in the State of Illinois.

9. What deemed a running at large.] § 2. Whoever being the owner or having control of any domestic animal of the species mentioned in section 1 of this Act shall suffer the same to run at large shall be fined not less than two dollars nor more than ten dollars for each offense, and for every day he shall permit the same to run at large after having once been convicted under this Act. The herding of any such animals upon uninclosed lands without the consent of the owner or person having control of such lands shall be deemed running at large under this Act.

10. Pound—Poundmaster—Fees—Duties.] § 3. It shall be the duty of the commissioners of highways in townships in counties under township organization, and the commissioners of highways of road districts in counties not under township organization, as soon as this Act takes effect, to select and prepare a suitable pound near the center of each township or voting district in counties under township organization, and near the center of each road district in counties not under township organization; appoint a poundmaster and fix his fees and charges, which shall remain as fixed until the next annual election, at which time the same may be changed or amended by a majority vote of the electors present, who shall at the same time elect a poundmaster for the ensuing year. Said poundmaster shall hold his office for one year and until his successor is duly elected: *Provided, however,* that in case the person so elected shall fail to act, or a vacancy occurs through resignation, removal, death, or any other cause whatever, the commissioners of highways shall fill such vacancy by appointing a person to act as pound-

master until the next annual election. [As amended by Act approved May 16, 1905. In force July 1, 1905. Laws p. 5.

11. **Poundmaster to enforce Act—Penalty.]** § 4. It shall be the duty of the poundmaster to enforce the provisions of this Act in his district; and for any failure so to do, he shall be liable to a fine of not less than three dollars nor more than twenty dollars.

12. **What counties or townships not affected by this Act.]** § 5. Nothing in this Act shall be construed to affect counties or townships which already have in force a law restraining the animals mentioned in this Act from running at large.

13. **Repeal.]** § 6. An Act entitled, "An Act to revise the law in relation to permitting animals to run at large," approved March 30, 1874, in force July 1, 1874, and an Act entitled, "An Act to prevent male animals running at large and for their restraint," approved March 8, 1872, in force July 1, 1872, and an Act entitled, "An Act to prevent animals running at large within the corporate limits of incorporated cities, villages and towns," approved June 16, 1891, in force July 1, 1891, are hereby repealed.

ESTRAYS.

AN ACT to revise the law in regard to estrays and other lost property. [Approved March 23, 1874. In force July 1, 1874. Revised Stat. chap. 50.]

14. When estrays may be taken up.
15. Who may not take up estrays.
16. Not to use before advertising—milk.
17. Several estrays.
18. Notice of taking up.
19. Recording notice with town clerk.

14. **When estrays may be taken up.]** § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That horses, mules, asses, neat cattle, swine, sheep or goats found straying at any time during the year in counties where such animals are not allowed to run at large, or between the last day of October and the fifteenth day of April in other counties, the owner thereof being unknown, may be taken up as estrays.¹

(1) Section 1 of this Act has been modified by effect of the Act of 1895 (see above), which prohibits domestic animals from running at large anywhere in Illinois at any time.

15. Who may not take up estrays.] § 2. No person who is not a householder in the county where the estray is found, shall take up such estray, and no person shall be allowed to take up any estray except upon or about his farm or place of residence. [Laws 1847, p. 47, § 2.]

16. Not to use before advertising—Milk.] § 3. No person taking up an estray shall use the same previous to advertising it; but animals giving milk may be milked for their benefit. [Revised Stat. 1845, p. 228, § 9.]

17. Several estrays.] § 4. When several estrays are taken up by the same person, they shall be included in the same notices and proceedings. [Revised Stat. 1845, p. 228.]

18. Notice of taking up.] § 5. Whoever takes up or has at any time upon his inclosed lands an estray, shall, within five days thereafter, post up notices² in three of the most public places in the town or precinct in which the estray was taken up or found, giving the residence of the taker-up and a particular description of such estray, its age, color and marks, natural and artificial, as near as may be, and stating before what justice of the peace in such town or precinct, and at what time, not less than ten nor more than fifteen days from the time of posting such notice, he will apply to have the estray appraised. [Revised Stat. 1845, p. 227, § 1.]

19. Recording notice with town clerk.] § 6. In counties under township organization, the taker-up shall also, within the same time deliver a copy of such notice to the town clerk of his town, who shall enter the same at large in a book to be kept for that purpose, to be known as the "Town Estray Book," noting in said book the time when the notice is delivered to him. [Laws 1855, p. 175, § 1, 2.]

(2) *Form of Notice of Taking up Estray by Householder.*

ESTRAY NOTICE.

Notice is hereby given that the subscriber, a householder in the county of ———, State of Illinois, who resides at [*give locality of residence with reasonable certainty*], in the township of ———, in said county, did on the — day of ———, A. D. 19—, take up, on his farm [*or at his place of residence*], in said township, one estray cow [*or as the case may be*], of the following description: [*give particular description — age, color and marks, natural and artificial, as near as may be*], and that the subscriber will on the — day of ———, A. D. 19—, at the hour of — o'clock, —. M., apply to L. M., Esq., justice of the peace in said township of ———, at his office therein, to have the said estray appraised.

Dated this — day of ———, A. D. 19—.

A. B.

The foregoing notice was delivered to me, C. D., town clerk of the town of ———, the — day of ———, A. D. 19—.

[Signed by the town clerk.]

DISEASES AMONG SWINE.

AN ACT to prevent the spread of contagious and infectious diseases among swine. [Approved June 21, 1895. In force July 1, 1895. Laws 1895, p. 6.]

- 20. Suffering swine to run at large—penalty.
- 21. Hog cholera—duty of owner.
- 22. Conveying diseased swine unlawful.
- 23. Penalty.

20. Suffering swine to run at large—Penalty.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That whoever, being the owner of, or having charge of any swine, shall suffer the same to run at large shall be fined not less than three dollars (\$3) nor more than ten dollars (\$10) for each offense, and for every day he shall allow the same to run at large after having been once convicted under this Act. The herding of any swine upon the grounds of another without the consent of the owner or person having control of such grounds shall be deemed a running at large under this Act. The law providing for holding elections to vote upon the question of allowing domestic animals to run at large, shall not be construed to apply to swine.

21. Hog cholera—Duty of owner.] § 2. It shall be the duty of the owner or person having charge of any swine and having knowledge of, or reasonable grounds to suspect the existence among them of the disease known as "hog cholera," or of any contagious or infectious disease, to use all reasonable means to prevent the spread of the same, and upon its coming to his knowledge that any of such swine has died of, or been slaughtered on account of any such disease to immediately burn or bury the same to a depth of two (2) feet.

22. Conveying diseased swine unlawful.] § 3. No person shall convey upon, or along any public highway or other public grounds, or any private lands, any diseased swine, or swine known to have died of, or been slaughtered on account of any contagious or infectious disease.

23. Penalty.] § 4. Any person convicted of a violation of sections two (2) or three (3) of this Act shall be fined in any sum not less than five (5) nor more than fifty (50) dollars, and shall be held liable in damages to the person or persons who may have suffered loss on account of such violation.

DOGS.

AN ACT providing for the payment of damages done by dogs. [Approved February 11, 1853. In force February 11, 1853. Laws 1853, p. 124.]

24. Chasing sheep—Owner liable.

25.—When a dog may be killed.

24. **Chasing sheep—Owner liable.]** § 1. The owner of any dog or dogs shall be liable in an action on the case for all damages that may accrue to any person or persons in this State, by reason of such dog or dogs killing, wounding, or chasing any sheep or other domestic animal, belonging to such other person or persons; and when the amount of such damages does not exceed \$100, the same may be recovered by an action before a justice of the peace.

25. **When a dog may be killed.]** § 2. If any person shall discover any dog or dogs in the Act of killing, wounding, or chasing sheep in any portion of this State, or shall discover any dog or dogs under such circumstances as to satisfactorily show that such dog or dogs has been recently engaged in killing or chasing sheep, for the purpose of killing them, such person is authorized to immediately pursue and kill such dog or dogs.

ANIMALS AND BIRDS *FERÆ NATURÆ*.

AN ACT declaring certain animals and birds *feræ naturæ* to be personal property. [Approved April 10, 1877. In force July 1, 1877. Laws 1877, p. 6.]

26. When made personal property.

26. **When made personal property.]** § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That all birds and animals *feræ naturæ* or naturally wild, when raised or in domestication, or kept in enclosures and reduced to possession, are hereby declared to be objects of ownership and absolute title, the same as cattle and other property, and shall receive the same protection of law, and in the same way and to the same extent shall be the subject of trespass or larceny, as other personal property.

BOUNTY FOR KILLING CROWS, ETC.

AN ACT to provide for the payment of bounties for killing Crows. [In force July 1, 1907. Laws 1907, p. 8.]

27. Bounty on crows and crow's eggs—County board may allow bounty.
28. Proof of killing—Certificate of clerk.
29. Payment of bounties.

27. Bounty on crows and crows' eggs—County board may allow bounty.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That the county board of any county in this State may hereafter allow such bounty on crows and eggs taken from the nest of any crow as said board may deem reasonable: *Provided*, such board shall enter an order upon its record, setting forth the amount of such allowance for any one year, which bounty shall be paid in the manner hereinafter provided. [As amended by Act approved June 9, 1909. In force July 1, 1909. Laws 1909, p. 8.]

28.—Proof of killing—Certificate of clerk.] § 2. Every person applying for such bounty shall take such crows, or the heads of such crows, or eggs, in lots of not less than ten, to the county clerk in counties not under township organization, or in counties under township organization, to the clerk of the township, village or city within which such crows shall have been killed or eggs taken, and make proof of the killing of said crows or the taking of said eggs to said clerk, by the affidavit of the person killing or taking the same, under oath or affirmation administered by said clerk and signed by the affiant, and stating in said affidavit that said crows were killed or eggs taken within the limits of the county, in counties not under township organization, or in counties under township organization, within the limits of the township, village or city in which said bounty is applied for. Whereupon the said clerk, if satisfied of the correctness of such claim, shall issue a certificate to the person claiming such bounty,

Form of Affidavit of Applicant Taking Eggs of Crows.

State of Illinois, }
 _____ County, } ss.
 Township of _____ }

I, _____, a resident of _____ township of said county and State, hereby present _____ crow's eggs and apply for bounty, authorized by an Act for the payment of bounties for taking eggs from the nests of crows, approved and in force July 1, 1907. And I hereby make oath and say that all of said eggs were taken from the nests of crows within the limits of the township of _____.

Subscribed and sworn to before me this — day of —, A. D. 19—. Township Clerk.

stating the amount of bounty to which such applicant is entitled, and deliver the same to said applicant, and said clerk shall destroy the heads of such crows or the eggs so delivered.

29. **Payment of bounties.]** § 3. Such certificate may be presented by the claimants or their agent to the county clerk of the county in which such crows were killed or eggs taken, who shall thereupon draw a warrant for the amount of the said bounty on the treasurer of said county, and said treasurer shall, upon presentation of said warrant, pay the same from the general or contingent fund of said county.

Certificate to County Clerk for Bounty for Taking Crow's Eggs from Nests.

State of Illinois, } No.—
 County, } ss.
 Township of ——— }

To the County Clerk of said county:

This is to Certify, That ———, an inhabitant of ——— township, of said county and State, has this day delivered to my office in said ——— township, ——— eggs of crows, claiming that said eggs were taken from the nests of crows within the limits of the township, and being satisfied of the correctness of such claim, I have caused the eggs of such crows to be destroyed and issued this certificate which entitles said ——— to the sum of ———, being the amount of the bounty granted by the Act approved and in force July 1, 1907.

In witness whereof, I have hereunto set my hand this ——— day of ———, A. D. 19—.

Township Clerk.

Form of Affidavit of Applicant for Bounty for Killing Crows.

State of Illinois, }
 County, } ss.
 Township of ——— }

I, ———, a resident of ——— township of said county and State, hereby present ——— heads of crows and apply for the bounty authorized by an Act for the payment of bounties for killing crows, approved and in force July 1, 1907. And I hereby make oath and say that all of said crows were killed within the limits of the township of ———.

Subscribed and sworn to before me this ——— day of ———, A. D. 19—. Township Clerk.

Certificate to County Clerk for Bounty for Killing Crows.

State of Illinois, } No.—
 County, } ss.
 Township of ——— }

To the County Clerk of said county:

This is to Certify, That ———, an inhabitant of ——— township, of said county and State, has this day delivered to my office in said ——— township, ——— heads of crows, claiming that said crows were killed within the limits of the township, and being satisfied of the correctness of such claims, I have caused the heads of such crows to be destroyed, and issued

BOUNTY FOR KILLING GROUND HOGS.

AN ACT to provide for the payment of bounties for killing ground hogs.
[Approved June 4, 1907. In force July 1, 1907. Laws 1907, p. 9.]

- 30. Bounty on ground hogs—County board may allow bounty.
- 31. Proof of killing—Certificate of clerk.
- 32. Payment of bounties.

30. Bounty on Ground Hogs—County board may allow bounty.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That the county board of any county in this State may hereafter allow such bounty on ground hogs as said board may deem reasonable: *Provided*, such board shall enter an order setting forth the amount of such allowance for any year, which bounty shall be paid in the manner hereinafter provided. [As amended by Act approved June 9, 1909. In force July 1, 1909. Laws 1909, p. 9.]

31. Proof of killing—Certificate of clerk.] § 2. Every person applying for such bounty shall take such ground hog or the head or scalp of such ground hogs in lots of not less than four to the county clerk in counties not under township organization, or in counties under township organization to the township clerk of the township within which such ground hogs shall have been killed and make proof of the killing of said ground hogs to said clerk by the affidavit of the person killing the same under oath or affirmation administered by said clerk and signed

this certificate, which entitled said ——— to the amount of the bounty granted by the act approved and in force July 1, 1907.

In witness whereof, I have hereunto set my hand this — day of ———, A. D. 19—.

Township Clerk.

Certificate to the County Clerk for Bounty for Killing Ground Hogs.

State of Illinois, } No.—
—— County, } ss.
Township of ——— }

To the County Clerk of said county:

This is to Certify, That ———, an inhabitant of ——— township, of said county and State, has this day delivered in my office in said ——— township, the heads or scalps of ——— ground hogs, claiming that said ground hogs were killed within the limits of the township, and being satisfied of the correctness of such claim, I have caused said heads or scalps to be destroyed and issued this certificate which entitles said ——— to the sum of ———, being the amount of the bounty granted by the Act approved and in force July 1, 1907.

In witness whereof, I have hereunto set my hand this — day of ———, A. D. 19—.

Township Clerk.

DIVISION VIII.

REVENUE.

AN ACT for the assessment of property and for the levy and collection of taxes. [Approved March 30, 1872. In force July 1, 1872. Revised Stat., chap. 120.]

PROPERTY LIABLE TO TAXATION.

1. Taxable property.

1. **Taxable property.] § 1.** That the property named in this section shall be assessed and taxed, except so much thereof as may be, in this Act, exempted:¹

First—All real and personal property in this State.

Second—All moneys, credits, bonds or stocks and other investments, the shares of stock of incorporated companies and associations, and all other personal property, including property **in transitu** to or from this State, used, held, owned or controlled by persons residing in this State.

(1) The Constitution of Illinois declares, Art. IX, § 1. The General Assembly shall provide such revenue as may be needful, by levying a tax, by valuation, so that every person and corporation shall pay a tax in proportion to the value of his, her or its property—such value to be ascertained by some person or persons, to be elected or appointed in such manner as the General Assembly shall direct, and not otherwise; but the General Assembly shall have power to tax peddlers, auctioneers, brokers, hawkers, merchants, commission merchants, showmen, jugglers, inn-keepers, grocery-keepers, liquor dealers, toll bridges, ferries, insurance, telegraph and express interests or business, venders of patents, and persons or corporations owning or using franchises and privileges, in such manner as it shall, from time to time, direct by general law, uniform as to the class upon which it operates.

Sec. 2. The specification of the objects and subjects of taxation shall not deprive the General Assembly of the power to require other subjects or objects to be taxed, in such manner as may be consistent with the principles of taxation fixed in this Constitution.

The rule of uniformity and equality of taxation prescribed by the Constitution must be applied not only to the rule of taxation, and to the district taxed, but also to all the property subject to taxation. *Primm v. City of Belleville*, 59 Ill. R., 142; *Lee v. Ruggles*, 62 Ill. R., 427; *Chicago & A. R. R. Co. v. Livingston*, 68 Ill. R., 458.

For the purpose of taxation, the law regards lands and improvements as a whole, except for obtaining a correct valuation. When the valuation is ascertained, and tax charged, it is against the tract or lot, including improvements. If sold for the tax, all is sold together. Arrangements between lessor and lessee are not to be considered by the revenue officers. *Opinion Auditor Miner*, April 30, 1867. But where a building is set on posts to denote its temporary condition, under a provision in the lease to remove it, it is held to be personal property. *Ballou v. Jones et al.*, 37 Ill. R., 94.; see also *Titus et al. v. Mabree et al.*, 25 Ill. R., 257.

While the transient visit of a person for a time at a place may not make him a resident while there, yet, if he has a regular and permanent business there, such as the loaning of money for himself and others, and remains there continuously for a time sufficiently extended to enable him to transact that business, which is his only known business or occupation, that will be regarded as his place of residence, so as to subject his own moneys and credits, employed in such business, and also the moneys and credits of other persons who may reside out of this State, but which are used and controlled by him as their agent, to taxation at such place, if in this State; and this although he may at the same time have a home or domicile in another State, where he also resides during certain limited portions of the year. *Tazewell Co. v. Davenport*, 40 Ill. R., 197.

Third—The shares of capital stock of banks and banking companies doing business in this State.

Fourth—The capital stock of companies and associations incorporated under the laws of this State, except companies and associations organized for purely manufacturing and mercantile purposes, or for either of such purposes, or for the mining and sale of coal, or for printing, or for the publishing of newspapers, or for the improving and breeding of stock. [As amended by Act in force July 1, 1905. Laws 1905, p. 353.]

PROPERTY EXEMPT FROM TAXATION.

2. Exempt property.

2. **Exempt property.] § 2.** All property described in this section, to the extent herein limited, shall be exempt from taxation, that is to say¹—

First—All lands donated by the United States for school purposes, not sold or leased; all property of schools; including the real estate on which the schools are located, not leased by such schools or otherwise used with a view to profit.¹

An assessment, commonly called special assessment for street improvement in a city, is not a tax, and the same rules applicable to one do not necessarily apply to the others. *City of Chicago v. Colby*, 20 Ill. R., 614; *Canal Trustees v. City of Chicago*, 12 Ill. R., 406.

In the construction of statutes, it will never be presumed that the legislature intended to abandon its rights as to the mode of assessing and collecting the State revenue. *Bank of the Republic v. Hamilton County*, 27 Ill. R., 54.

The jurisdiction of the State, on the subject of taxation for State purposes, is supreme, over which the government of the United States can have no power or control. *State Treasurer v. Collector of Sangamon County*, 28 Ill. R., 512; *The People v. Bradley et al.*, 39 Ill. R., 130. But the federal Constitution limits the power of taxation by a State in express terms as to imports and exports, and by implication, as to those instruments employed by the general government to carry out its authority, as government bonds, and the operation of such instruments. *The People v. Bradley et al.*, 39 Ill. R., 130.

A law of a State including steamboats as a portion of the property of an individual subject to State taxation, is valid. It does not interfere with the power of Congress to regulate commerce, nor is it a tonnage duty. *Perry v. Torrence*, 8 Ohio R., 521.

A sum of money, certain to be received annually and at stated periods, is within the meaning of the tax law, an annuity, unless the same be receivable as a pension, a salary, or as compensation for labor of services subsequently to be performed. *Wetmore v. State*, 18 Ohio R., 77.

The term "investment in stocks," embraces within its meaning shares in the capital stock of banks and banking associations, and includes as well shares in the capital stock of national banks. *The People v. Bradley et al.*, 39 Ill. R., 131.

(1) Under the constitutional provision requiring all taxes to be imposed equally upon the property of persons and corporations, exemptions from such burdens are to be construed strictly and not extended by judicial construction to embrace other property than is plainly expressed in the law. *People ex rel. v. Seaman's Friends' Society*, 87 Ill. R., 246.

Laws exempting property from taxation, being in derogation of equal rights should be construed strictly; therefore, held, that property mentioned as exempt, is only exempt from taxation when used exclusively for the purposes mentioned. If used for other purposes, it is liable to taxation, no matter what purposes the proceeds are in future to be applied. *Cincinnati College v. State*, 19 Ohio R., 110.

When an exception as to the burden of taxation is made in favor of a corporation, justice demands that it should show clearly a compliance with the terms and spirit of the Act exempting it from taxation before it can be permitted to escape

Second—All property used exclusively for religious purposes, or used exclusively for school and religious purposes and not leased or otherwise used with a view to profit.²

Third—All lands used exclusively as grave yards or grounds for burying the dead.

Fourth—All unentered government lands; all public buildings or structures of whatsoever kind, and the contents thereof, and the land on which the same are located, belonging to the United States.

a duty incumbent equally upon every citizen. *People ex rel. v. Graceland Cemetery Co.*, 86 Ill. R., 336.

Whilst courts of equity will in many cases enjoin the collection of a tax sought to be enforced against property exempt from taxation, they will not enjoin the collection of the whole tax, because in determining the valuation of an aggregate property, exempt property may have been included as a factor. *Huck et al. v. Chicago & Alton R. R. Co.*, 86 Ill. R., 352.

United States government bonds and notes are exempt from taxation under State authority. *Bank v. Supervisors*, 7 Wallace R., 26. But the income derived therefrom, if it is in money or other taxable property, is subject to taxation. Opinion Att'y Gen'l Edsall, June 12, 1873.

Horses and carriages carrying the mail of the United States, if owned by the government, are exempt from taxation, but not so if owned by individuals. Opinion Auditor Miner, June 27, 1867.

Corn, wheat, oats and other field products, and beef, pork and other articles of provisions, are not exempt from taxation. Opinion Auditor Miner, Jan. 7, 1867.

It is within the constitutional power of the legislature to exempt property from taxation, or to commute the general rate for a fixed sum. *Illinois Central R. R. Co. v. County of McLean*, 17 Ill. R., 293. But not so in regard to persons or class of persons. *Hunsacker et al. v. Wright et al.*, 30 Ill. R., 146; *O'Kane v. Treat et al.*, 25 Ill. R., 561.

The assessment of public taxes, or special assessment for public improvements upon the public property of the State, county or municipal corporations, is a mere question of policy. The power exists to make it bear its share of the one or the other. It may be exempt from the one and subjected to the other. *Canal Trustees v. City of Chicago*, 12 Ill. R., 405; *Ross v. Mayor of New York*, 3 Wend. R., 335; cited and sustained in case of *Higgins v. City of Chicago*, 18 Ill. R., 280.

When an officer assesses and values property exempt from taxation, he acts without authority, and all his acts in excess of his power are void. *Republic Life Ins. Co. v. Pollak et al.*, 75 Ill. R., 295.

(1) Concerning exemption of school property the Constitution of 1848, empowered the General Assembly to exempt from taxation such property as they might deem necessary "for school purposes." In this respect it differs from the present Constitution, which limits such right of exemption to lands "used exclusively for school purposes."

Under the provisions of the Constitution of 1848, the legislature granted a charter to the Northwestern University, and provided in the charter that all property belonging to or owned by the corporation should be exempt from taxation. Held, that this charter was a contract which could not be impaired by subsequent legislation, had under the Constitution of 1870, limiting the exemption from taxation to such property as was actually used for school purposes. *The Northwestern University v. The People ex. rel. Miller*, Sup. Ct. U. S.; *Chicago Legal News*, April 19, 1879. Reversing same case, 80 Ill. R., 333.

No provision of law is known exempting school lands from taxation, which have reverted on foreclosure of mortgage. Opinion Auditor Dubois, May 7, 1864.

In order to exempt a school house from taxation, it should be held by the school directors under such title as will give them the right to possess and control it at all times for the use of the district. *Pace v. County Commissioners of Jefferson Co.*, 20 Ill. R., 644.

If a seminary is established as such by law, the lot on which it stands is not taxable. But if a private school, although called a "seminary," conducted for private gain or profit, it is not exempt from taxation. Opinion Auditor Miner, Feb. 14, 1868.

(2) All church property actually and exclusively used for public worship, when the land is owned by the congregation, is exempt from taxation, the land to be of reasonable size for the location of the church. The buildings must be used exclusively for sacred and not for secular purposes. *Trustees M. E. Church v. Chicago*, 26 Ill. R., 482. The lot upon which a parsonage stands is subject to taxation. Opinion Att'y Gen'l Edsall, March 17, 1873. A parsonage owned by a church is not exempt from taxation. Opinion Auditor Miner, April 11, 1867; *Lippincott*, Dec. 22, 1869; *St. Peter's Church v. Commissioners Scott Co.*, 12 Minn. R., 395.

In regard to houses used for public worship, the intent of the law exempting them is, that they shall be used for sacred purposes and not otherwise. That part

Fifth—All property of every kind belonging to the State of Illinois.¹

Sixth—All property belonging to any county, town, village or city, used exclusively for the maintenance of the poor. All swamp or overflowed lands belonging to any county, so long as the same remain unsold by such county; all public buildings belonging to any county, township, city or incorporated town, with the ground on which such buildings are erected, not exceeding in any case ten acres.²

Seventh—All property of institutions of public charity, when actually and exclusively used for such charitable purposes, not leased or otherwise used with a view to profit; and all free public libraries.

Eighth—All fire engines or other implements used for the extinguishment of fires, with the buildings used exclusively for the safe keeping thereof, and the lot of reasonable size on which the building is located, when belonging to any city, village or town.

Ninth—All market houses, public squares or other public grounds used exclusively for public purposes; all works, machinery and fixtures belonging exclusively to any town, village or city, used exclusively for conveying water to such town, village or city; all works, machinery and fixtures of drainage districts, when used exclusively for pumping water from the ditches and drains of such district for drainage purposes.

Tenth—All property which may be used exclusively by societies for agricultural, horticultural, mechanical and philosophic-

so used may be exempt, and portions otherwise used may be taxed. *First M. E. Church v. City of Chicago*, 26 Ill. R., 487.

Church property may be assessed for special purposes, though not liable for ordinary taxes. *City of Ottawa v. Fisher et al.*, 20 Ill. R., 423; *The Trustees of the Illinois and Michigan Canal v. The City of Chicago*, 12 Ill. R., 403.

(1) Real estate owned by the State is not subject to taxation for State, county or municipal purposes, nor can it be legally assessed or sold for special assessments for local improvements in cities. See case *Taylor v. The People ex rel.*, Sup. Ct. Ill., Sept. Term, 1872. Opinion Att'y Gen'l Edsall, March 12, 1873.

It is only the property owned by the State that is exempt from taxation, not that in which it may ultimately share in avails. *Ryan v. Gallatin County*, 14 Ill. R., 83.

The Constitution of Illinois concerning exemption, declares: Art. IX, § 3. The property of the State, counties and other municipal corporations, both real and personal, and such other property as may be used exclusively for agricultural and horticultural societies, for schools, religious, cemetery and charitable purposes, may be exempted from taxation; but such exemption shall be only by general law. In the assessment of real estate, incumbered by public easement, any depreciation occasioned by such easement, may be deducted in the valuation of such property.

(2) The exemption of swamp lands from taxation ceases when sold by the county, and it is presumed that such lands reverting on foreclosure of mortgage would not be exempt under the law. Opinion Auditor Miner, May 13, 1867.

al purposes, and not for pecuniary profit.¹

[As amended by Act approved and in force June 26, 1913. Laws 1913, p. 511.

RULES FOR VALUING PERSONAL PROPERTY.

3. Personal property.

3. **Personal property.]** § 3. Personal property shall be valued as follows:²

First—All personal property, except as herein otherwise directed, shall be valued at its fair cash value.

Second—Every credit for a sum certain, payable either in money or labor, shall be valued at a fair cash value, for the sum so payable; if for any article of property, or for labor or services of any kind, it shall be valued at the current price of such property, labor or service.

Third—Annuities and royalties shall be valued at their then present total value.³

(1) Land to be exempt must be owned by the society or used by it without any compensation to the owner. It must be used exclusively for the purposes for which the society was created. The organization must not contemplate any pecuniary profit to its individual members. The land must not be used for purposes other than those incident to the legitimate work of the society even though the profits arising from such outside use are to be applied to the furtherance of such work. Any lands or other property owned by the society, not used in its legitimate work, even though lying idle and not producing revenue, should be assessed. Opinion Auditor Needles, May 25, 1878.

(2) The legislature cannot make a discrimination in favor of personal property. The burden must be imposed upon all the property within the limits taxed. *Primm v. City of Belleville*, 59 Ill. R., 142.

It is indispensable, to support a levy or assessment of taxes, that there be a valuation of the property. *Town of Lebanon et al. v. Ohio & Miss. R. Co.*, 77 Ill. R., 539.

It is made the duty of assessors, and State Board of Equalization, so far as charged with that duty, to assess all personal property at its "fair cash value," and all real estate at a "price it would bring at a fair voluntary sale," so that every person or corporation shall pay a tax in proportion to his or its property. *Law et al. v. The People*, 87 Ill. R., 385.

The first cost of property is no evidence of its value. *C. & N.-W. R. R. Co. v. Boone County*, 44 Ill. R., 241.

In valuing property the assessor has no right to discriminate for or against any class of property. The only criterion known to the law is the actual money worth of the property. Opinion Auditor Miner, May 28, Sept. 25, 1868, May 29, 1867. And this may be on a "greenback" basis, so called. Opinion Auditor Miner, May 21, 1866.

Choses in action, such as promisory notes, are to be listed at their true value. If a note is wholly worthless, it is not to be listed at all; if it is of some value, but less than its face, it is to be listed at what it is worth. *Exchange Bank Columbus v. Hines*, 3 Ohio State R., 1.

Under a law providing "for taxing all property in this State according to its true value," held, that capital invested in the business of purchasing hogs and slaughtering and packing pork for sale or transportation, is subject to taxation. *Jackson v. Steele*, 15 Ohio R., 652.

One portion of the taxpayers of a county cannot be required to pay more taxes in proportion to its value than another portion in the same county, and a discrimination cannot be made in this regard against the property of a railroad company, and although property is assessed at a low rate, still uniformity must be observed. *C. & N.-W. R. R. Co. v. Boone County*, 44 Ill. R., 240.

(3) The third section of the revenue Act requiring that the capital stock of all companies and associations created under the laws of this State, shall be so valued

Fourth—The capital stock of all companies and associations now or hereafter created under the laws of this State, except companies and associations organized for purely manufacturing and mercantile purposes or for either of such purposes, or for the mining and sale of coal, or for printing, or for the publishing of newspapers, or for the improving and breeding of stock, shall be so valued by the State Board of Equalization as to ascertain and determine, respectively, the fair cash value of such capital stock, including the franchise, over and above the assessed value of the tangible property¹ of such company or association, such board shall adopt such rules and principles for ascertaining the fair cash value of such capital stock, as to it may seem equitable and just; and such rules and principles, when so adopted, if not inconsistent with this Act, shall be as binding and of the same effect as if contained in this Act, subject, however, to such change, alteration or amendment as may be found, from time to time, to be necessary, by said board: *Provided*, that in all cases where the tangible property or capital stock of any company or association is assessed under this Act, the shares of capital stock of such company or association shall not be assessed or taxed in this State. This clause shall not apply to the capital stock, or shares of capital stock, of banks organized under the general banking laws of this State or under any special charter heretofore granted by the legislature of this State.² [As amended by Act in force July 1, 1905. See ¶ 318, § 18. Laws 1905, p. 353.]

by the State Board of Equalization as to ascertain and determine, respectively, the fair cash value of such capital stock, including the franchise, over and above the assessed value of the tangible property of such company or association being a general law, and uniform as to the class upon which it operates, is not in violation of any constitutional provision. *Porter et al. v. R. R. I. & St. L. R. R. Co.*, 76 Ill. R., 561.

(1) Where the tangible property or capital stock of a corporation (excepting banks organized under the general law) is assessed, the shares of stock of the corporation cannot be assessed to the owners. *Republic Life Ins. Co. v. Pollack et al.*, 75 Ill. R., 300.

The legal property of the shareholder in a corporation is quite distinct from that of the corporation, although the shares of stock have no value save that which they derive from the corporate property and franchise; and a tax levied upon the property of the one is not, in any legal sense, levied upon the property of the other. A tax upon the capital stock and franchise of a corporation is not a tax upon the shares of the shareholders. *Porter et al. v. R. R. I. & St. L. R. R. Co.*, 76 Ill. R., 561.

In assessing the value of a railroad for purposes of taxation, the inquiry should be, what is the property worth, to be used for the purposes for which it was designed, and not for any other purposes to which it might be applied, and in all cases it is proper to consider what would a prudent man give for the property as a permanent investment, with a view to present and future income, and the assessment should be at its present and not future value. *State of Illinois v. Illinois Central Railroad Co.*, 27 Ill. R., 70.

(2) *Porter v. R. R. I. & St. L. R. R. Co.*, 76 Ill., 561; *Republic Life Ins. Co. v. Pollock*, 75 Ill., 293; *C. R. & Q. R. R. Co. v. Cole*, 75 Ill., 501; *Hub v. Hanburg*, 211 Ill., 43.

The withdrawal of real estate from the limits of a municipal corporation and from the power of taxation by the municipality, after such corporation has incurred a large indebtedness which must be paid by taxation, is in violation of the

RULES FOR VALUING REAL ESTATE.

4. Real property.

4. Real property.] § 4. Real property shall be valued as follows:

First—Each tract or lot of real property shall be valued at its fair cash value, estimated at the price it would bring at a fair, voluntary sale.

Second—Taxable leasehold estates shall be valued at such a price as they would bring at a fair, voluntary sale for cash.

Third—When a building or structure is located on the right of way of any canal, railroad or other company leased or granted for a term of years to another, the same shall be valued at such a price as such building or structure and lease or grant would sell at a fair voluntary sale for cash.

Fourth—In valuing any real property on which there is a coal or other mine, or stone or other quarry, the same shall be valued at such a price as such property, including the mine or quarry, would sell at a fair, voluntary sale for cash. [See ¶ 318, § 18.]

PERSONAL PROPERTY—WHEN LISTED.

5. Time to list.

5. Time to list.] § 5. Personal property shall be listed between the first day of May and the first day of July of each year, when required by the assessor, with reference to the quantity held or owned on the first day of May, in the year for which the property is required to be listed. Personal property purchased or acquired on the first day of May shall be listed by or for the person purchasing or acquiring it. [See ¶ 315, § 15.]

WHO SHALL LIST AND WHAT LISTED.

6. Manner of listing.

6. Manner of listing.] § 6. Personal property shall be listed in the manner following:¹

First—Every person of full age and sound mind, being a resident of this State, shall list all his moneys, credits, bonds or

constitutional provision regarding uniformity as the basis of taxation both in respect to persons and to property, unless the act of disconnecting territory is attended with some corresponding benefit to the municipality. *City of Galesburg v. Hawkinson et al.*, 75 Ill. R., 152.

(1) Taxes may be imposed upon persons engaged in the classes of business, or exercising the callings specified in first section of Art. IX, of the Constitution, entitled

stocks, shares of stock of joint stock or other companies, (when the capital stock of such company is not assessed in this State), moneys loaned or invested, annuities, franchises, royalties, and other personal property.

Second—He shall also list all moneys and other personal property invested, loaned or otherwise controlled by him as the agent or attorney, or on account of any other person or persons, company or corporation whatsoever, and all moneys deposited, subject to his order, check or draft, and credits due from or owing by any person or persons, body corporate or politic. [See § 19.

Third—The property of a minor child shall be listed by his guardian; if he have no guardian, then by the father, if living; if not, by the mother, if living; and if neither father nor mother be living, by the person having such property in charge.

Fourth—The property of an idiot or lunatic, by his conservator; or if he has no conservator, by the person having charge of such property.

Fifth—The property of a wife by her husband, if of sound mind; if not, by herself.

Sixth—The property of a person for whose benefit it is held in trust, by the trustee; of the estate of a deceased person, by the executor or administrator.

Seventh—The property of corporations whose assets are in the hands of receivers, by such receivers.

Eighth—The property of a body politic or corporate, by the president, or proper agent or officer thereof.

Ninth—The property of a firm or company, by a partner or agent thereof.

Tenth—The property of manufacturers and others in the hands of agent, by and in the name of such agent, as merchandise.

Revenue, by license, or a tax upon receipts, or in such manner as the General Assembly may see fit to provide by general law, uniform as to each class of interest taxed. Capital invested otherwise than in some business or interest specified in the latter branch of that section, can only be taxed by valuation. Opinion Att'y Gen'l Edsall, Jan. 23, 1877.

The intention of the revenue law is that all property controlled by a resident of this State, as agent or attorney, or on account of any other person or persons, company or corporation, should be listed by him and assessed in the township or district in which he resides; the obvious reasons being:

First—That the property would be "in sight" in that district, and hence less liable to escape taxation; and, secondly—even though the actual owner should list it as his residence, his assessor would not have an opportunity to arrive at its fair cash value by actual inspection. The regular steps, as indicated by the law, are as follows:

The second clause of section 6 makes it the duty of the person who controls to list the property for taxation. Section 9 prescribes the place at which it shall be assessed. § 20, § 19, time when listed and manner of listing. § 260, § 254, creates a lien for the tax upon the personal property of the person assessed, (i. e., the agent). See 73, Ill. R., 125, and § 262, § 256, creates a lien upon the property assessed in favor of the agent, until he is indemnified against the payment of the tax. Opinion Auditor Needles, June 6, 1878.

WHERE LISTED AND ASSESSED, AND WHAT HELD TO BE PERSONAL PROPERTY—MANNER OF LISTING.

7. Where personal property listed.
8. Farm property—Owner not residing on farm.
9. Of manufactures in hands of agent.
10. Purchaser's interest in exempted lands, personalty.
11. In transitu.
12. Nursery stock.
13. Personal property of banks and others.
14. Repeal.
15. The personal property of gas and coke companies.
16. The personal property of street railroad, plank road, etc.
17. The horses, stages and other personal property of stage companies.
18. The personal property of express or transportation companies.
19. Consignee only his interest.
20. Listing on behalf of others.
21. Interest on bonds.
22. Money secured by deed.
23. Removing—Where owner assessed.
24. How place of listing fixed.
25. Schedule.

7. **Where personal property listed.]** § 7. Personal property, except such as is required in this Act to be listed and assessed otherwise, shall be listed and assessed in the county, town, city, village or district where the owner resides. The capital stock and franchises of corporations and persons, except as may be otherwise provided, shall be listed and taxed in the county, town, district, city or village where the principal office or place of business of such corporation or person is located in this State. If there be no principal office or place of business in this State, then at the place in this State where any such corporation or person transacts business.¹

8. **Farm property—Owner not residing on farm.]** § 8. When the owner of live stock or other personal property connected with a farm does not reside thereon, the same shall be

(1) A listing of the capital stock of a company or association created under the laws of this State, including its franchises, either by the corporation or the local assessor, is not an essential prerequisite to its valuation by the State Board of Equalization, and such valuation, without such listing and returns thereof made, will not render a tax levied thereon void. *Pacific Hotel Co. v. Lieb et al.*, 83 Ill. R., 602.

The local assessor is not required to fix any valuation on the capital stock of corporations and associations, but the matters required to be returned by him are merely such as the law deems to be important in enabling the State Board to discharge its duty intelligently. If such returns are regarded fraudulent or untrustworthy by the Board, they may entirely disregard them, and make the valuation from other sources supposed to be more accurate and reliable. *Pacific Hotel Co. v. Lieb et al.*, 83 Ill. R., 602.

The funds and taxable property of insurance companies in the hands of local agents, should be assessed at the place where such agents transact their business, although the company may have a general office in this State. *Opinion Att'y Gen'l Edsall.*

listed and assessed in the town or district where the farm is situated: *Provided*, if the farm is situated in several towns or districts, it shall be listed and assessed in the town or district in which the principal place of business on such farm shall be.

9. Of manufacturers in hands of agent.] § 9. The property of manufacturers and others, in the hands of agents, shall

Personal property must be listed for taxation, in the county, town or district where the owner resides, notwithstanding the property itself may remain and be used in another county, as in case of farming implements, stock, etc., upon a farm. *King et al. v. McDrew et al.*, 31 Ill. R., 418. Yet if permanently located elsewhere, it may be listed there. *Mills, Executor, etc., v. Thornton et al.*, 26 Ill. R., 300.

A person cannot choose where his property shall be taxed; this is fixed by law. *Opinion Auditor Miner*, Aug. 17, 1867.

In regard to taxation in cities and incorporated towns, the place and manner of taxation will be regulated by their charters. *Opinion Auditor Miner*, Aug. 17, 1867; July 22, 1867; *Wilkie v. City of Pekin*, 19 Ill. R., 160.

It is not necessary that a person to be amenable to the taxing power, should be a citizen of, or domiciled within the State; but he must be a resident. There is a distinction in law between residence and domicile, and a person may have the former in one State and the latter in another. Nor is the liability of taxation placed on the ground of citizenship. *Tazewell County v. Davenport*, 40 Ill. R., 197.

A person residing in this State, acting as agent for a nonresident, is liable to tax as agent on securities, taken for money loaned. *Opinion Auditor Miner*, July 25, 1857; *Tazewell County v. Davenport*, 40 Ill. R., 197.

Where three executors of an estate reside in the same township—two of them within the corporate limits of a village, the other without such limits—and the three have possession in law of the taxable moneys, credits, bonds and stocks of the estate, the same must, in view of the equities and analogies of the statute (which does not expressly provide for such a case), be entered for taxation—one-third as of the place of residence of each executor. And this principle would be applicable to a case where the executors resided in different townships. *State v. Mathews*, 10 Ohio State R.

Merchandise is to be taxed at the place of business of the merchant, which may or may not be his residence. *Opinion Auditor Miner*, Aug. 7, 1868. And where the same party has goods in different localities, carrying on business there, the property should be listed where it is located. *Opinion Auditor Miner*, July 16, 1867.

The stock or interest of a vessel, boat or ship, navigating the waters of this State, is taxable where the owner resides and it is thought that no question concerning the taxation can arise which could be carried into the United States courts. *Opinion Auditor Miner*, July 20, 1867. The place or situs of a vessel is the place of its registration and port from which it regularly departs and returns. *Wilkie v. City of Pekin*, 19 Ill. R., 160.

A lease of lands belonging to the State, including canal lands, etc., with improvements, may be taxed, and the interest of the tenant sold. *La Salle Manufacturing Co. v. The City of Ottawa*, 16 Ill. R., 418.

Leasehold property belonging to the State, should be valued in the assessment, at the price the assessor believes can be obtained for the leasehold, and this should include all rights and privileges belonging or in anywise pertaining thereto. *Opinion Auditor Miner*, July 14, 1868.

The law requires that persons owning personal property shall make, sign and deliver to the assessor a statement of their property subject to taxation. *Town of Charlestown v. McCrory*, 36 Ill. R., 456.

The fact that property subject to taxation has not been listed, although it improperly increases the burden of taxation upon the property that is listed, does not render the tax wholly void, or authorize the interference of a court of equity. *Exchange Bank Columbus v. Hines*, 3 Ohio State R., 1.

The assessor has no right to double the assessed value of property belonging to the estate of a deceased person on account of any act of the executor. *Leper v. Pulsifer*, 37 Ill. R., 110.

When a party makes out and delivers to the assessor a list of his taxable property, which is accepted without question, that officer has no power afterward, of his own motion, to alter it without first giving the party assessed notice. If he does a court of equity will grant relief by injunction. *Cleghorn v. Postlewaite et al.*, 43 Ill. R., 431.

The assessor is to value real estate himself, and need not give notice thereof to the person assessed. *Opinion Auditor Miner*, May 6, 1867.

be listed and assessed at the place where the business of such agent is carried on. [See ¶ 6, § 6, ¶ 20, § 19, ¶ 262, § 256.

10. Purchaser's interest in exempted lands, personalty.]

§ 10. When real estate is exempt in the hands of the holder of the fee, and the same is contracted to be sold, the amount paid thereon by the purchaser, with the enhanced value of the investment and improvement thereon until the fee is conveyed, shall be held to be personal property, and listed and assessed as such, in the place where the land is situated.

11. In transitu.] § 11. Personal property, *in transitu*, shall be listed and assessed in the county, town, city, or district where the owner resides: *Provided*, if it is intended for a business, it shall be listed and assessed at the place where the property of such business is required to be listed.¹

12. Nursery stock.] § 12. The stock of nurseries, growing or otherwise, in the hands of nurserymen, shall be listed and assessed as merchandise.

13. Personal property of banks and others.] § 13. The personal property of banks or bankers, brokers, stock-jobbers, insurance companies (except life insurance companies organized under the laws of this State), hotels, livery stables, saloons, eating houses, merchants and manufacturers, ferries, mining companies, and companies not specifically provided for in this Act, shall be listed and assessed in the county, town, city, village or district where their business is carried on, except such property as shall be liable to assessment elsewhere, in the hands of agents. All persons, companies and corporations in this State owning steamboats, sailing vessels, wharf boats, barges and other water craft, shall be required to list the same for assessment and taxation in the county, town, city, village or district in which the same may belong or be enrolled, registered or licensed, or kept when not enrolled, registered or licensed. All property and assets of life insurance companies organized under the laws of this State, shall be assessed to the corporation as to a natural person, in the name of the corporation, in the county, town, city, village or district of its residence, as herein provided and not otherwise. The place where its office is located in its articles of incorporation shall be deemed its residence: *Provided*, its business is actually transacted at such office; but if it shall establish its principal office in any other place than the place named in its articles

(1) A State has no right to tax property in transitu from one State to another across its territory, or upon navigable rivers lying wholly or in part within its borders. A State has the right to tax all tangible personal property which has its actual situs within its limits whether owned by residents or nonresidents. Taxes on personal property do not become liens until the tax books are received by the collector. Opinion Att'y Gen'l Edsall, April 16, 1877.

of incorporation, then the place where it transacts its principal business shall be deemed its residence for all the purposes of this Act. In computing the taxable property of life insurance companies organized under the laws of this State, the value of the real property on which the company pays taxes shall be deducted from its net admitted assets above liabilities, as testified and shown by the latest report of the Insurance Superintendent, and the remainder shall be the amount of personal property for which the companies shall be assessed. The term "life insurance companies organized under the laws of this State," as used in this section, shall not be construed to apply to fraternal beneficiary societies, or to corporations operating on the assessment plan, organized under the laws of the State. [As amended by Act in force July 1, 1905. Laws 1905, p. 356.]

14. **Repeal.]** § 13a. All laws and parts of laws inconsistent herewith are hereby repealed. [Added by Act in force July 1, 1905. Laws 1905, p. 356.]

15.] § 14. **The personal property of gas and coke companies** except the pipes laid down, shall be listed and assessed in the town, village, district or city where the principal works are located. Gas mains and pipes, laid in roads, streets or alleys, shall be held to be personal property, and listed and assessed as such, in the town, district, village or city where the same are laid.

16.] § 15. **The personal property of street railroad, plank road, gravel road, turnpike or bridge companies** shall be listed and assessed in the county, town, district, village or city where the principal place of business is located. The track, road or bridge shall be held to be personal property, and listed and assessed as such, in the town, district, village or city where the same is located or laid.

17.] § 16. **The horses, stages and other personal property of stage companies** or persons operating stage lines, shall be listed and assessed in the county, town, city or district where they are usually kept.

18.] § 17. **The personal property of express or transportation companies** shall be listed and assessed in the county, town, district, village or city where the same is usually kept.

19. **Consignees only his interest.]** § 18. No consignee shall be required to list, for taxation, the value of any property consigned to him for the sole purpose of being stored or forwarded, except to the extent of his interest in such property.

20. **Listing on behalf of others.]** § 19. Persons required to list property on behalf of others, shall list it in the same place

in which they are required to list their own; but they shall list it separately from their own, specifying in each case the name of the person, estate, company or corporation to whom it belongs.

21. Interest on bonds.] § 20. Persons, for themselves or others, holding bonds or stocks of any kind, the principal of which bonds or stocks has been or may hereafter be exempted from taxation, shall list the amount of accrued interest on such bonds, without regard to the time when the same is to be paid.

22. Money secured by deed.] § 21. Where a deed for real estate is held for the payment of a sum of money, such sum, so secured, shall be held to be personal property, and shall be listed and assessed as credits.

23. Removing—Where owner assessed.] § 22. The owner of personal property removing from one county, town, city, village or district to another, between the first day of May and the first day of July, shall be assessed in either, in which he is first called upon by the assessor. The owner of personal property moving into this State from another State, between the first day of May and the first day of July, shall list the property owned by him on the first day of May of such year, in the county, town, city, village or district in which he resides: *Provided*, if such person has been assessed, and can make it appear to the assessor that he is held for tax for the current year on the property, in another State, county, town, city or district, he shall not be again assessed for said year. See ¶ 307, § 7, ¶ 308, § 8, ¶ 309, § 9.

24. How place of listing fixed.] § 23. In all questions that may arise under this Act as to the proper place to list personal property, or when the same cannot be listed as stated in this Act, if between several places in the same county, the place for listing and assessing shall be determined and fixed by the county board; and when between different counties or places in different counties, by the Auditor of Public Accounts; and when fixed in either case, shall be as binding as if fixed by this Act.

25. Schedule.] § 24. Persons required to list personal property shall make out, under oath, and deliver to the assessor, at the time required, a schedule of the numbers, amounts, quantity and quality of all personal property in their possession or under their control, required to be listed for taxation by them. It shall be the duty of the assessor to determine and fix the fair cash value of all items of personal property, including all grain on hand on the first day of May and in assessing notes, accounts, bonds and moneys, the assessor shall be governed by the same

rules of uniformity that he adopts as to value in assessing other personal property, and the assessor is hereby authorized to administer the oath required in this section and if any person shall refuse to make such schedule under oath, then the assessor shall list the property of such person according to his best judgment and information and shall add to the valuation of such list an amount equal to fifty per cent of such valuation and if any person making such schedule shall swear falsely he shall be guilty of perjury and punished accordingly. Any person so required to list personal property who shall refuse, neglect or fail when requested by the proper assessor, so to do, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding two hundred dollars, and the several assessors shall report any such refusal to the county attorney whose duty it is hereby made to prosecute the same. [As amended by Act approved May 31, 1879. In force July 1, 1879. Laws 1879, p. 152. See ¶ 307, § 7, ¶ 308, § 8, ¶ 309, § 9, ¶ 317, § 17, ¶ 320, § 20.]

FORM OF SCHEDULE.

26. Schedule.

27. When assessor may examine under oath and list property.

26. Schedule.] § 25. Such schedule, when completed by the assessor in extending in a separate column the value of such property, shall truly and distinctly set forth.

First—The number of horses of all ages, and the value thereof.

Second—The number of cattle of all ages, and the value thereof.

Third—The number of mules and asses of all ages, and the value thereof.

Fourth—The number of sheep of all ages, and the value thereof.

Fifth—The number of hogs of all ages, and the value thereof.

Sixth—Every steam engine, including boilers, and the value thereof.

Seventh—Every fire or burglar-proof safe, and the value thereof.

Eighth—Every billiard, pigeon-hole, bagatelle or other similar tables, and the value thereof.

Ninth—Every carriage and wagon, of whatsoever kind, and the value thereof.

Tenth—Every watch and clock, and the value thereof.

Eleventh—Every sewing or knitting machine, and the value thereof.

Twelfth—Every piano forte, and the value thereof.

Thirteenth—Every melodeon and organ, and the value thereof.

Fourteenth—Every franchise, the description and the value thereof.

Fifteenth—Every annuity and royalty, the description and the value thereof.

Sixteenth—Every patent right, the description and the value thereof.

Seventeenth—Every steamboat, sailing vessel, wharf-boat, barge or other water craft, and the value thereof.

Eighteenth—The value of merchandise on hand.

Nineteenth—The value of material and manufactured articles on hand.

Twentieth—The value of manufacturers' tools, implements and machinery (other than boilers and engines, which shall be listed as such).

Twenty-first—The value of agricultural tools, implements and machinery.

Twenty-second—The value of gold or silver plate and plated ware.

Twenty-third—The value of diamonds and jewelry.

Twenty-fourth—The amount of moneys of bank, banker, broker or stock-jobber.

Twenty-fifth—The amount of credits of bank, banker, broker or stock-jobber.

Twenty-sixth—The amount of moneys other than of bank, banker, broker or stock-jobber.

Twenty-seventh—The amount of credits other than of bank, banker, broker or stock-jobber.

Twenty-eighth—The amount and value of bonds or stocks.

Twenty-ninth—The amount and value of shares of capital stock of companies and associations not incorporated by the laws of this State.

Thirtieth—The value of property such person is required to list as a pawn-broker.

Thirty-first—The value of property of companies and corporations other than properly hereinbefore enumerated.

Thirty-second—The value of bridge property.

Thirty-third—The value of property of saloons and eating houses.

Thirty-fourth—The value of household or office furniture and property.

Thirty-fifth—The value of investments in real estate and improvements thereon required to be listed under this Act.

Thirty-sixth—The value of all other property required to be listed.

27. **When assessor may examine under oath and list property.]** § 26. That whenever the assessor shall be of opinion that the person listing property for himself or for any other person, company or corporation, has not made a full, fair and complete schedule of such property, he may examine such person under oath in regard to the amount of the property he is required to schedule, and for that purpose he is authorized to administer oaths; and if such person shall refuse to answer under oath and a full discovery make, the assessor may list the property of such person or his principal, according to his best judgment and information. If the person so examined shall swear falsely, he shall be guilty of perjury, and punished accordingly. [See § 83.

RULES FOR LISTING CREDITS.

- 28. What debts deducted from credits.
- 29. What debts not deducted.
- 30. Deduction verified by oath—Perjury—Fines—Statements.

28. **What debts deducted from credits.]** § 27. In making up the amount of credits which any person is required to list for himself, or for any other person, company or corporation, he shall be entitled to deduct from the gross amount of credits the amount of all *bona fide* debts owing by such person, company or corporation, to any other person, company or corporation, for a consideration received; but no acknowledgement of indebtedness not founded on actual consideration, believed when received to have been adequate, and no such acknowledgment made for the purpose of being so deducted, shall be considered a debt within the meaning of this section; and so much only of any liability, as surety for others, shall be deducted as the person making out the statement believes he is legally and equitably bound, and will be compelled to pay on account of the inability or insolvency of the principal debtor; and if there are other sureties who are able to contribute, then only so much as the surety in whose behalf the statement is made will be bound to contribute: *Provided*, that nothing in this section shall be so construed as to apply to any bank, company or corporation exercising banking powers or privileges, or to authorize any deductions allowed by this section from the value of any other item of taxation than credits.

29. **What debts not deducted.]** § 28. No person, company or corporation shall be entitled to any deduction from the amount of any bonds, stocks, or money loaned, or on account of any bond, note or obligation of any kind, given to any insurance

company on account of premiums or policies, nor on account of any unpaid subscription to any religious, literary, scientific or charitable institution or society, nor on account of any subscription to or installment payable on the capital stock of any company, whether incorporated or unincorporated.

30. Deductions verified by oath—Perjury—Fines—Statements.] § 29. In all cases where deductions are claimed from credits, the assessor shall require that such deductions be verified by the oath of the person, officer or agent claiming the same; and any such person, officer or agent, knowingly or willfully making a fraudulent statement of such deductions claimed, so verified by affidavit, shall be liable to a fine of not less than \$100, nor more than \$1,000, in addition to all damages sustained by the State, county or other local corporation, to be recovered in any proper form of action in any court of competent jurisdiction, in the name of the People of the State of Illinois. Such fines, when recovered, shall be paid into the county treasury, and the damages, when collected, shall be paid to whom they belong. The assessor shall preserve the statement of deductions thus claimed, so verified by affidavit, and when he returns the assessment books shall file the same with the county clerk, to be kept on file in his office for two years, and at the expiration of such time said statement of deduction shall be destroyed by said clerk, but, in the meantime, shall be subject only to the inspection of the officers charged with the execution of this law.

RULES FOR LISTING STOCK OF MUTUAL BUILDING, LOAN AND HOMESTEAD ASSOCIATIONS.

31. Shares of stock—When and how assessed.
32. Non-resident stock holders.
33. Mode of determining value of stock.
34. Shares of stock—How assessed—Emergency.

31. Shares of stock—When and how assessed.] § 29a. The stockholders of every mutual building, loan and homestead association for the purpose of building and improving homesteads and loaning money to the members thereof only, whether such association is organized under the laws of this State or of any other State or territory of the United States, shall list for taxation with the local assessor where such stockholders reside, the number of shares of stock of such association owned by them respectively and the value thereof on the first day of April in each year, and the same shall be assessed against such stockholders and the taxes thereon collected in the same manner as on other personal property: *Provided*, That no stock of such

association while loaned upon by, and pledged as security to the association issuing it, to an amount equal to the par value of such stock, shall be subject to assessment. [As amended by Act approved and in force April 18, 1901.¹ Laws 1901, p. 265.]

32. Nonresident stock holders.] § 29b. The shares of stock of all stockholders residing without this State of such associations shall be assessed by the local assessor where such associations are located, and, for the purpose of collecting the taxes thereon, a lien is hereby created upon such stock. [Added by Act approved and in force April 30, 1895. Laws 1895, p. 301.]

33. Mode of determining value of stock.] § 29c. In determining the value of such stock for the purpose of taxation the value of the real estate owned by such associations shall be first deducted from their assets and such real estate shall be assessed in the manner now provided by law. [Added by Act approved and in force April 30, 1895. Laws 1895, p. 301.]

34. Shares of stock—How assessed—Emergency.] § 29d. The shares of stock and property of every such mutual building, loan and homestead association shall be assessed as herein provided, and not otherwise.

Whereas, assessments are required to be made between the first day of May and the first day of July, 1895, therefore an emergency exists and this Act shall take effect and be in force from and after its passage. [Added by Act approved and in force April 30, 1895. Laws 1895, p. 301.]

RULES FOR LISTING THE PROPERTY AND BUSINESS OF BANKS, BANKERS, BROKERS AND STOCK JOBBERS.

35. Banks, etc.—Rules for listing.

35. Banks, etc.—Rules for listing.] § 30. Every bank (other than banks incorporated under the banking laws of this State or the United States), banker, broker or stock jobber, shall at the time fixed by this Act for listing personal property, make out and furnish the assessor a sworn statement showing: *First*, the amount of money on hand or in transit; *second*, the amount of funds in the hands of other banks, bankers, brokers, or others, subject to draft; *third*, the amount of checks, or other cash items, the amount thereof not being included in either of the preceding items; *fourth*, the amount of bills receivable, discounted

(1) Amendment (1901) which changed word "May" to "April" and added proviso, unconstitutional. In re St. Louis & Investment Co., 194 Ill., 609.

or purchased, and other credits, due or to become due, including accounts receivable, and interest accrued but not due, and interest due and unpaid; *fifth*, the amount of bonds and stocks of every kind, and shares of capital stock or joint stock of other companies or corporations, held as an investment or any way representing assets; *sixth*, all other property appertaining to said business, other than real estate (which real estate shall be listed and assessed as other real estate is listed and assessed under this Act); *seventh*, the amount of all deposits made with them by other parties; *eighth*, the amount of all accounts payable other than current deposit accounts; *ninth*, the amount of bonds and other securities exempt by law from taxation, specifying the amount and kind of each, the same being included in the preceding fifth item. The aggregate amount of the first item shall be listed as moneys. The amount of the sixth item shall be listed the same as other similar personal property is listed under this Act. The aggregate amount of the seventh and eighth items shall be deducted from the aggregate amount of the second, third and fourth items of said statement and the amount of the remainder, if any, shall be listed as credit. The aggregate amount of the ninth item shall be deducted from the aggregate amount of the fifth item of such statement and the remainder shall be listed as bonds or stocks. [As amended by Act approved May 15, 1903. In force July 1, 1903. Laws 1903, p. 294.

PAWN-BROKER.

36. Who is a pawn-broker.

36. Who is a pawn-broker.] § 31. Every person or company engaged in the business of receiving property in pledge or as security for money or other thing advanced to the pawner or pledger, shall be held to be a pawn-broker, and shall, at the time required by this Act, return, under oath, the value of all property pledged and held by him, as a pawn-broker, on hand on the first day of May, annually, and taxes shall be charged upon the fair cash value of such property to such pawn-broker, the same as other property. [See ¶ 307, § 7; ¶ 308, § 8; ¶ 309, § 9.

LISTING CAPITAL STOCK OF CORPORATIONS AND FRANCHISES OF PERSONS.

37. Rules for listing and valuing property of certain corporations.

38. Schedule returned—Forwarded to auditor—State Board of Equalization to assess capital stock.

39. Franchises to be listed and valued.

37. Rules for listing and valuing property of certain corporations.] § 32. Bridges, express, ferry, gravel, road, gas, in-

insurance, mining, plank road, stage, steamboat, street railroad, transportation, turnpike and all other companies and associations incorporated under the laws of this State other than banks organized under any special or general law of this State and companies and associations organized for purely manufacturing and mercantile purposes, or for either of such purposes, or for the mining and sale of coal, or for printing or for publishing of newspapers, or for the improving and breeding of stock, shall in addition to the other property required by this Act to be listed, make out and deliver to the assessor a sworn statement of the amount of its capital stock, setting forth particularly:

First—The name and location of the company or association.

Second—The amount of capital stock authorized, and the number of shares into which such capital stock is divided.

Third—The amount of capital stock paid up.

Fourth—The market value, or if no market value, then the actual value of the shares of stock.

Fifth—The total amount of all indebtedness, except the indebtedness for current expenses, excluding from such expenses the amount paid for the purchase or improvement of property.

Sixth—The assessed valuation of all its tangible property. Such schedule shall be made in conformity to such instruction and forms as may be prescribed by the Auditor of Public Accounts. In all cases of failure or refusal of any person, officer, company or association to make such return or statement, it shall be the duty of the assessor to make such return or statement from the best information which he can obtain.¹ [As amended by Act in force July 1, 1905. Laws 1905, p. 353.]

38. Schedule returned—Forwarded to auditor—State Board of Equalization to assess capital stock.] § 33. Such statements shall be scheduled by the assessor; and such schedule, with the statements so scheduled, shall be returned by the assessor to

The words "capital stock," as used in the Act of 1872, do not mean "shares of stock," either separately or in the aggregate, but are intended to designate the property of the corporation subject to taxation. *Porter et al. v. R. R. I. & St. L. R. R. Co.*, 76 Ill. R., 561.

Section 1, Art. IX, of the Constitution, only requires that corporations shall be taxed in such manner as the General Assembly shall from time to time direct by general law, and the only uniformity required is as to the class upon which such general law shall operate. *Porter et al. v. R. R. & St. L. R. R. Co.*, 76 Ill. R., 561.

The legislature may rightfully provide for taxing the capital stock of corporations, instead of the shares in the hands of the holders, and require corporations to pay such tax, leaving them to deduct the same from the dividends. *Ottawa Glass Co. v. McCaleb, etc.*, 81 Ill. R., 556.

(1) The law requiring the assessor to make and return a schedule, where the corporation fails to list its property, is not intended for the benefit of the corporation; and the neglect of the local assessor to do his duty, furnishes no excuse for the negligence of the officers of a corporation. They should make the proper returns to the assessor whether solicited or not and thus they can be heard through such officer. If this is not done, they may still be heard, on proper application, before the State Board. *Pacific Hotel Co. v. Lieb*, 83 Ill. R., 602.

the county clerk. Said clerk shall at the time he makes his report of assessment, forward to the auditor all such schedules and statements so returned to him. The auditor shall, annually, on the meeting of the State Board of Equalization, lay before said board the schedules and statements herein required to be returned to him; and said board shall value and assess the capital stock of such companies or associations, in the manner provided in this Act.

39. Franchise to be listed and valued.] § 34. Every person owning or using a franchise granted by any law of this State, shall, in addition to his other property, list the same as personal property, giving the total value thereof.²

STATE AND NATIONAL BANKS. (3)

- 40. How assessed and taxed.
- 41. List of stockholders to be kept, etc.
- 42. Shares listed in owner's name—Tax extended.
- 43. How tax on shares collected—Lien.
- 44. Dividends to be held for taxes—Shares sold.

40. How assessed and taxed.] § 35. The stockholders of every kind of incorporated bank located within this State, whether such bank has been organized under the banking law of this State or of the United States shall be assessed and taxed upon the value of their shares of stock therein, in the county, town, district, village or city where such bank or banking association is located, and not elsewhere, whether such stockholders reside in such place or not. The value of such shares of stock for purpose of taxation, shall be ascertained by deducting from the value of all the shares of the capital stock of such

(2) A franchise of a corporation is property, and has a value capable of being estimated, and is therefore not only liable to be taxed, but under the Constitution is required to be in some appropriate mode. *Ottawa Glass Co. v. McCaleb, etc.*, 81 Ill. R., 556; *Porter et al. v. R. R. I. & St. L. R. R. Co.*, 76 Ill. R., 561.

(3) A state tax against a shareholder of a national bank, for any year, under the law then in force, and voluntarily paid, cannot be recovered back, because the assessment under the law, was illegal; the property being subject in some mode to taxation. *People ex rel. v. Miner*, 46 Ill. R., 374; *Van Allen v. The Assessors*, 3 Wallace R., 573. *Bradley v. State of Illinois*, 4 Wallace R., 457.

Whether the shares of national bank stock are listed for taxation by the individual owners, or the capital stock is listed by the bank, a similar valuation and a like burden are imposed, and in whichever mode the assessment is made, there is no wrong perpetrated and no injustice done. *Board of Supervisors of Stephenson Co. v. Manny*, 54 Ill. R., 160.

The assessors will ascertain the ownership, number and value of all such shares in the stock of banks located in their respective counties and towns, and return the same as required by this Act, being governed by all the rules of valuation and regulations in other respects provided by law as to the assessment of other property not made inapplicable by the terms of this Act, and the clerks will extend taxes thereon, and collectors will make collections in accordance with the general revenue laws and the provisions of this Act. Circular Auditor Miner, July 1, 1867.

bank, the fair cash value of the real estate owned by such bank or banking association situated in the county in which such bank or banking association is located as determined by the assessor. Such shares shall be listed and assessed with regard to the ownership and value thereof, as they existed on the first day of April, annually, subject, however, to the restriction that taxation of such shares shall not be at a greater rate than is assessed upon any other moneyed capital in the hands of individual citizens of this state, in the county, town, district, village or city where such bank is located. The shares held in this State of capital stock of national banks not located in this State, shall not be required to be listed under the provisions of this Act. [As amended by Act approved May 15, 1903. In force July 1, 1903. Laws 1903, p. 295.]

41. List of stockholders to be kept, etc.] § 36. In each such bank there shall be kept at all times a full and correct list of the names and residences of its stockholders, and of the number of shares held by each; which list shall be subject to the inspection of the officers authorized to assess property for taxation; and it shall be the duty of the assessor to ascertain and report to the county clerk a correct list of the names and residences of all stockholders in any such bank, with the number and assessed value of all such shares held by each stockholder.

42. Shares listed in names of owners—Tax extended.] § 37. The county clerk, to whom such returns are made, shall enter the valuation of such shares in the tax lists, in the names of the respective owners of the same, and shall compute and extend taxes thereon the same as against the valuation of other property in the same locality.

43. How tax on shares collected—Lien.] § 38. The collector of taxes, and the officer or officers authorized to receive taxes from the collector, may, all or either of them, have an action to collect the tax assessed on any share or shares of bank stock from the avails of the sale of such share or shares; and the tax against such share or shares shall be and remain a lien thereon till the payment of said tax.

44. Dividends to be held for taxes—Shares sold.] § 39. For the purpose of collecting such taxes, it shall be the duty of every such bank, or the managing officer or officers thereof, to retain so much of any dividend or dividends belonging to such stockholders as shall be necessary to pay any taxes levied upon their shares of stock, respectively, until it shall be made to appear to such bank or its officers that such taxes have been paid; and any officer of any such bank who shall pay over or author-

ize the paying over of any such dividend or dividends, or any portion thereof, contrary to the provisions of this section, shall thereby become liable for such tax; and if the said tax shall not be paid, the collector of taxes where said bank is located shall sell said share or shares to pay the same, like other personal property. And, in case of sale, the provision of law in regard to the transfer of stock when sold on execution, shall apply to such sale.

MANNER OF LISTING AND VALUING THE PROPERTY OF RAILROADS.

45. Schedules—Values on first of May. (See ¶ 308, § 8.)
46. Time of filing—Form of schedule.
47. "Railroad track"—Description of.
48. How "railroad track" listed and taxed.
49. "Rolling stock"—Schedule.
50. How "rolling stock" listed and taxed.
51. Personalty and real estate other than "rolling stock," etc.
52. How such other personal and real property to be assessed.
53. Railroad returns to auditor.
54. Neglect to return.
55. Schedules—Board to assess railroad property.
56. Railroad tax books—Extending and collecting tax.
57. Description of platted lands.

45. Schedules—1st May.] § 40. Every person, company or corporation owning, operating or constructing a railroad in this state, shall return sworn lists or schedules of the taxable property of such railroad, as hereinafter provided. Such property shall be listed and assessed with reference to the amount, kind and value on the first day of May, of the year in which it is listed.¹ [See ¶ 307, ¶ 309, § 7, § 9, ¶ 355, § 53.]

46. Time of filing schedule—Form of same.] § 41. They shall, in the month of May of the year 1873, and at the same time in each year thereafter when required, make out and file with the county clerks of the respective counties in which the railroad may be located, a statement or schedule showing the property held for right of way, and the length of the main and all side and second tracks and turnouts in such county, and in each city, town and village in the county, through or into which the road may run, and describing each tract of land, other than a city, town or village lot, through which the road may run, in accord-

(1) The road over which a company occasionally runs its trains under a mere easement or a license is not any part of its main track, so as to subject it to assessment for taxation in that county, and where a county illegally assesses and collects a tax upon rolling stock of a railroad company, it not being taxable in such county by reason of the company only using another road therein under a mere easement, the company may bring its action against the county and recover the money back. *Cook County v. C. B. & Q. R. R. Co.*, 35 Ill. R., 640.

ance with the United States surveys, giving the width and length of strip of land held in each tract, and the number of acres thereof. They shall also state the value of improvements and stations located on the right of way. New companies shall make such statement in May next after the location of their roads. When such statement shall have been once made, it shall not be necessary to report the description as hereinbefore required, unless directed so to do by the county board; but the company shall, during the month of May annually, report the value of such property, by the description set forth in the next section of this Act, and note all additions or changes in such right of way as shall have occurred.¹ [See ¶ 307, § 7; ¶ 309, § 9; ¶ 355, § 53.]

47. “Railroad track”—Description of.] § 42. Such right of way, including the superstructures of main, side or second track and turnouts, and the station and improvements of the railroad company on such right of way, shall be held to be real estate for the purposes of taxation, and denominated “railroad track,” and shall be so listed and valued; and shall be described in the assessment thereof as a strip of land extending on each side of such railroad track, and embracing the same, together with all the stations and improvements thereon, commencing at a point where such railroad track crosses the boundary line in entering the county, city, town or village, and extending to the point where such track crosses the boundary line leaving such county, city, town or village, or to the point of termination in the same, as the case may be, containing acres, more or less (inserting name of county, township, city, town or village boundary line of same, and number of acres, and length in feet), and when advertised or sold for taxes, no other description shall be necessary.²

48. How “railroad track” listed and assessed.] § 43. The value of the “railroad track” shall be listed and taxed in the several counties, towns, villages, districts and cities, in the proportion that the length of the main track in such county, town, village, district or city bears to the whole length of the road in this state, except the value of the side or second track, and all turnouts, and all station houses, depots, machine shops, or other

(1) Railroad track is required to be assessed by the State Board of Equalization, but all other real estate of railroad companies, including the stations and other buildings and structures thereon, must be assessed by the local assessors. The term “right of way” can only be understood as embracing the land used as a way for the road, and not such additional ground as may be used for the convenience of the railroad, but not a part of its way.

(2) C. B. & Q. R. R. v. Paddock, et al., 75 Ill. R., 616; People v. Ill. Cent. R. R. Co., 215 Ill., 177; People v. A. T. & S. F. Ry. Co., 206 Ill., 252.

buildings belonging to the road, which shall be taxed in the county, town, village, district or city in which the same are located.

49. **“Rolling stock”—Schedule.]** § 44. The movable property belonging to a railroad company shall be held to be personal property, and denominated, for the purpose of taxation, “rolling stock.” Every person, company or corporation owning, constructing or operating a railroad in this state, shall, in the month of May, annually, return a list or schedule, which shall contain a correct detailed inventory of all the rolling stock belonging to such company, and which shall distinctly set forth the number of locomotives of all classes, passenger cars of all classes, sleeping and dining cars, express cars, baggage cars, horse cars, cattle cars, coal cars, platform cars, wrecking cars, pay cars, hand cars and all other kinds of cars. [See ¶ 307, § 7; ¶ 309, § 9; ¶ 355, § 53.]

50. **How “rolling stock” listed and taxed.]** § 45. The rolling stock shall be listed and taxed in the several counties, towns, villages, districts and cities, in the proportion that the length of the main track used or operated in such county, town, village, district or city bears to the whole length of the road used or operated by such person, company or corporation, whether owned or leased by him or them in whole or in part. Said list or schedule shall set forth the number of miles of main track on which said rolling stock is used in the state of Illinois, and the number of miles of main track on which said rolling stock is used elsewhere.

51. **Personality and real estate other than “rolling stock” and “railroad track” where listed.]** § 46. The tools and materials for repairs, and all other personal property of any railroad except “rolling stock,” shall be listed and assessed in the county, town, village, district or city wherever the same may be on the first day of April. All real estate, including the stations and other buildings and structures thereon, other than that denominated “railroad track,” belonging to any railroad, shall be listed as lands or lots, as the case may be, in the county, town, village, district or city where the same are located.

52. **How such other personal and real property to be assessed.]** § 47. The county clerk shall return to the assessor of the town or district, as the case may require, a copy of the schedule or list of the real estate (other than “railroad track”), and of the personal property (except “rolling stock”) pertaining

* Amendment (1901) which changed word “May” to “April” and added proviso, unconstitutional. In re St. Louis & Investment Co. 194 Ill. 609.

to the railroad; and such real and personal property shall be assessed by the assessor. Such property shall be treated in all respects, in regard to assessment and equalization, the same as other similar property belonging to individuals, except that it shall be treated as property belonging to railroads, under the terms "lands," "lots," and "personal property." [See ¶ 307, § 7; ¶ 309, § 9; ¶ 355, § 53.]

53. Railroad returns to auditor.] § 48. At the same time that the lists or schedules are hereinbefore required to be returned to the county clerks, the person, company or corporation running, operating or constructing any railroad in this state, shall return to the auditor of public accounts sworn statements or schedules, as follows:

First—Of the property denominated "railroad track," giving the length of the main and side or second tracks and turn outs, and showing the proportions in each county, and the total in the state.

Second—The "rolling stock," giving the length of the main track in each county, the total in this state, and the entire length of the road.

Third—Showing the number of ties in track per mile, the weight of iron or steel per yard, used in main or side tracks; what joints or chairs are used in track, the ballasting of road, whether graveled or dirt, the number and quality of buildings or other structures on "railroad track," the length of time iron in track has been used, and the length of time the road has been built.

Fourth—A statement or schedule showing:

1. The amount of capital stock authorized, and the number of shares into which such capital stock is divided.

2. The amount of capital stock paid up.

3. The market value, or if no market value, then the actual value of the shares of stock.

4. The total amount of all indebtedness, except for current expenses for operating the road.

5. The total listed valuation of all its tangible property in this state.

Such schedule shall be made in conformity to such instructions and forms as may be prescribed by the auditor of public accounts.

54. Neglect to return.] § 49. If any person, company or corporation, owning, operating or constructing any railroad, shall neglect to return to the county clerks the statements or schedules required to be returned to them, the property so to be returned and assessed by the assessor shall be listed and assessed as other

property. In case of failure to make returns to the auditor, as hereinbefore provided, the auditor, with the assistance of the county clerks and assessors, when he shall require such assistance, shall ascertain the necessary facts and lay the same before the state board of equalization. In case of failure to make such statements, either to the county clerk or auditor, such corporation, company or person shall forfeit, as a penalty, not less than \$1,000 nor more than \$10,000 for each offense, to be recovered in any proper form of action, in the name of the People of the State of Illinois, and paid into the state treasury.¹

55. Schedules—Board to assess railroad property.] § 50. The auditor shall, annually, on the meeting of the state board of equalization, lay before said board the statements and schedules herein required to be returned to him; and said board shall assess such property in the manner hereinafter provided.

56. Railroad tax book—Extending and collecting tax.] § 51. The county clerk shall procure, at the expense of the county, a record book, properly ruled and headed, in which to enter the railroad property of all kinds, as listed for taxation, and shall enter the valuations as assessed, corrected and equalized, in the manner provided by this Act; and against such assessed, corrected or equalized valuation, as the case may require, the county clerk shall extend all the taxes thereon for which said property is liable. And at the proper time fixed by this Act for delivering tax books to the county collector, the clerk shall attach a warrant, under his seal of office, and deliver said book to the county collector, upon which the said county collector is hereby required to collect the taxes therein charged against railroad property, and pay over and account for the same in the manner provided in other cases. Said book shall be returned by the collector and be filed in the office of the county clerk for future use.

57. Description of platted land.] § 52. When any railroad company shall make or record a plat of any contiguous lots or parcels of land belonging to it, the same may be described as designated on such plat.

TELEGRAPH COMPANIES—RETURN.

58. Schedule.

59. Board of equalization to assess—How tax collected.

60. Office furniture, etc., how listed and assessed.

58. Schedule.] § 53. Any person, company or corporation, using or operating a telegraph line in this state, shall, annually,

(1) C., R. I. & P. Ry. Co. v. People, 217 Ill., 165.

in the month of May, return to the auditor of public accounts a schedule or statement, as follows:

First—The amount of capital stock authorized, and the number of shares into which such capital stock is divided.

Second—The amount of capital stock paid up.

Third—The market value, or if no market value, then the actual value of the shares of stock.

Fourth—The total amount of all indebtedness, except current expenses, for operating the line.

Fifth—The length of line operated in each county, and the total in the state.

Sixth—The total assessed valuation of all its tangible property in this state.

Such schedule shall be made in conformity to such instructions and forms as may be prescribed by the auditor of public accounts, and with reference to amounts and values on the first day of May of the year for which the return is made. [See ¶ 308, § 8; ¶ 309, § 9.]

59. Board of equalization to assess—How tax collected.] § 54. The auditor shall annually, on the meeting of the state board of equalization, lay before said board the statement or schedule herein required to be returned to him; and said board shall assess the capital stock of such telegraph company, in the manner hereinafter provided. The tax charged on the capital stock of telegraph companies shall be placed in the hands of county collectors, in a book provided for that purpose, the same as is required for railroad property, and may be included in same book with railroad property.

60. Office furniture, etc., how listed and assessed.] § 55. The office furniture and other personal property of telegraph companies shall be listed and assessed in the county, town, district, village or city where the same is used or kept.

PENALTY.

61. For false schedule, etc.

62. Perjury.

61. False schedule, etc.] § 56. If any person or corporation shall give a false or fraudulent list, schedule or statement, required by this Act, or shall fail or refuse to deliver to the assessor, when called on for that purpose, a list of the taxable personal property which he is required to list under this Act, he or it shall be liable to a penalty of not less than \$10, nor more than \$2,000, to be recovered in any proper form of action, in the name of the people of the State of Illinois, on the complaint

of any person. Such fine, when collected, to be paid into the county treasury.

62. Perjury.] § 57. Whoever shall willfully make a false list, schedule or statement, under oath, shall, in addition to the penalty provided in the preceding section, be liable as in the case of perjury.

REAL PROPERTY—AS OF WHAT TIME LISTED—WHO LIABLE FOR TAX.

63. Real property listed May first.

64. Owner on first of May liable.

65. Leasehold interest in exempted land.

66. When certain lands become taxable.

63. Real property—Listed May 1st.] § 58. All real property in this State, subject to taxation under this Act, including real estate becoming taxable for the first time, shall be listed to the owners thereof, by such owners, their agents, county clerks or assessors, or the county board, and assessed for the year one thousand eight hundred and eighty-one, and yearly thereafter, with reference to the amount owned on the first day of May, in each year, including all property purchased on that day: *Provided*, that no assessment of real estate shall be considered as illegal by reason of the same not being listed or assessed in the name of the owner or owners thereof. [As amended by Act approved June 2, 1881. Laws 1881, p. 133. See Revenue ¶ 307, § 7; ¶ 309, § 9; ¶ 355, § 53, post.]

64. Owner on 1st May liable.] § 59. The owner of property on the first day of May in any year, shall be liable for the taxes of that year. The purchaser of property on the first day of May shall be considered as the owner on that day. [See ¶ 308, § 8; ¶ 309, § 9; ¶ 355, § 53.]

65. Leasehold interest in exempted lands.] § 60. When real estate, which is exempt from taxation, is leased to another whose property is not exempt, and the leasing of which does not make the real estate taxable, the leasehold estate and the appurtenances shall be listed as the property of the lessee thereof, or his assignee, as real estate. [See ¶ 307, § 7; ¶ 309, § 9; ¶ 355, § 53.]

66. When certain lands become taxable.] § 61. Government lands entered or located on or prior to the first day of May, shall be taxable for that year, and annually thereafter. School lands and lots sold shall be taxable in like manner as government lands. Lands and lots sold by the trustees of the Illinois and Michigan Canal shall be taxable from and after the time the full payment therefor is made. Illinois Central Railroad lands and lots shall be taxable from and after the time the

last payment becomes due. Swamp lands and lots shall become taxable whenever the county sells, conveys or agrees to convey its title: *Provided*, that canal, Illinois Central Railroad and swamp lands and lots shall be, in other respects, governed, as to the time of becoming taxable, the same as government lands. [See Revenue ¶ 308, § 8; ¶ 309, § 9; ¶ 355, § 53, post.]

SUBDIVIDING.

67. Owner to plat—Record—Description.

68. Owner neglecting—County clerk to cause plat, etc.

67. Owner to plat—Record—Description.] § 62. In all cases where any tract or lot of land is divided in parcels, so that it cannot be described without describing it by metes and bounds, it shall be the duty of the owner to cause such land to be surveyed and platted into lots. Such plat shall be certified and recorded. The description of real estate, in accordance with the number and description set forth in the plat, aforesaid, shall be deemed a good and valid description of the lot or parcel of land so described.¹

68. Owner neglecting—County clerk to cause plat, etc.] § 63. If the owner of any such tract or lot shall refuse or neglect to cause such survey to be made within thirty (30) days after having been notified by the county clerk, by publication of a notice in a newspaper in the county, having general circulation, at least three times, said clerk shall cause such survey to be made and recorded; and the expenses of the publication of such notice and of making such survey shall be added to the tax levied on such real property, and when collected, shall be paid on demand to the persons to whom it is due. [As amended by Act approved May 31, 1879. In force July 1, 1879. Laws 1879, p. 255.]

(1) It is the duty of assessors to assess each tract of land separately, and a judgment and order of sale against a tract of land which has not been assessed, but which has been assessed in connection with other lands aggregately is erroneous. *Howe et al. v. The People ex rel.*, 86 Ill. R., 288.

The description of property for purposes of taxation should be such that a qualified surveyor can locate it thereby. Sale under a description running "Part of § 12, etc.," without definitely locating such part is void for uncertainty. *Opinion Auditor Needles*, March 12, 1878.

A misdescription or defective description of a tract of land by an assessor will not affect the taxes imposed on other tracts, and the law will not allow a party resisting judgment against his property for taxes, to raise an objection which does not apply to his property, but does to that of others who do not object. *Buck v. The People*, 78 Ill. R., 560.

The assessment of a tax upon a "part of a lot" or "one acre of a lot," without quantity or location in the one case or without location in the other is too vague and indefinite to authorize a sale of any part or in any place. *Massie v. Long*, 2 Ohio R., 287.

A certain and definite description of each parcel of land or lot should be given. It is necessary to the validity of a tax sale that the land should appear upon the duplicate by a pertinent description, and in the name of the rightful owner, if known. If not known, however, the land is still taxed, being entered to an unknown owner. The tax attaches upon the land, rather than upon the person: not upon the number of entry or survey, but upon the land included in such entry or survey. *Douglas v. Dangerfield*, 14 Ohio R., 522; *Massie v. Long*, 2 Ohio R., 287.

HOW LISTED AS BETWEEN COUNTIES.

69. In two counties.

69. In two counties.] § 64. Any tract of land not exceeding one-sixteenth of a section, shall be listed in the county where the greater part thereof is situated. When any such tract of land shall be situated equally in two counties, the auditor shall determine in which county it shall be listed. If there be several tracts similarly situated, the auditor shall apportion them equally between the counties as nearly as practicable. County clerks may have the actual contents of such tracts lying in their respective counties, surveyed, platted and recorded, in the manner provided for in other cases.

HOW LISTED AS BETWEEN TOWNS.

70. In different towns.

70. In different towns.] § 65. The foregoing rule shall apply to lands lying in different towns: *Provided*, the county clerk shall act in said cases instead of the auditor.

MAKING AND DELIVERY OF ASSESSMENT BOOKS AND BLANKS.

71. How books to be made.

72. Books to be by townships—When separate books for cities, etc.

73. Lists compared.

74. Books ready by first May.

75. Assessors to call for books.

76. Other lands.

71. How books to be made.] § 66. The county clerk shall make up for the several towns or districts in his county, in books to be provided for that purpose, the lists of lands and lots to be assessed for taxes. When a whole section, half section, quarter section or half quarter section belongs to one owner, it shall, at the request of the owner, or his agent, be listed as one tract; and when all lots in the same block belong to one owner, they shall, at the request of the owner, or his agent, be listed as a block. When several adjoining lots in the same block belong to the same owner, they shall, at the request of the owner or his agent, be included in one description: *Provided*, that when any tract or parcel of real estate is situated in more than one town, or in more than one school, road or other district, or is situated and assessed in any drainage district, for drainage purposes, the portion thereof in each town or district shall be listed separately; and the lands in any drainage district shall be listed corresponding, as near as may be, to the respective subdivisions and descriptions in the latest assessment roll of such drainage district. Said clerk

shall enter in the proper column, opposite the respective tracts or lots, the name of the owner thereof so far as he shall be able to ascertain the same. Said books shall contain columns in which may be shown the number of acres or lots improved, and the value thereof; the number of acres or lots not improved, and the value thereof; the total value and such other columns as may be required. [As amended by Act approved and in force June 26, 1885. [See Revenue ¶ 310, § 10, post.]

72. Books to be by townships—When separate books for cities, etc.] § 67. The books for the assessment of property in counties not under township organization, shall be made up by congressional townships, but parts of fractional townships, less than full townships, may be added to full townships, at the discretion of the county board. In counties under township organization, said books shall be made to correspond with the organized townships. Separate books shall be made for the assessment of property and the collection of all taxes and special assessments thereon, within the corporate limits of cities, towns and villages, if ordered by the county board. [See Revenue ¶ 310, § 10.]

73. Lists compared.] § 68. The county clerk shall cause such lists to be carefully compared with the list of taxable real property on file in his office. [See Revenue ¶ 310, § 10, post.]

74. Books ready by 1st May.] § 69. The county clerk shall cause such assessment books, and all blanks necessary to be used by the assessor in the assessment of real or personal property, to be in readiness for delivery to the assessor on or before the first day of May, in each year. [As amended by Act approved June 2, 1881. In force July 1, 1881. Laws 1881, p. 133. [See Revenue, ¶ 310, § 10, post.]

75. Assessors to call for books.] § 70. It shall be the duty of each county, town or district assessor to call on the county clerk on or before the first day of May, in each year and receive the necessary books and blanks for the assessment of property, and the failure of any assessor to do so shall be deemed sufficient cause to declare his office vacant and for the appointment of a successor. [As amended by Act approved June 2, 1881. In force July 1, 1881. Laws 1881, p. 133. See Revenue ¶ 311, § 11, post.]

76. Other lands.] § 71. If, after the delivery of such books to the assessor in any year, the clerk shall receive an abstract showing the entry of any lands or lots not contained in such books, it shall be his duty to furnish a list of the same to the proper assessor within five days after such abstract is received.

APPOINTMENT OF ASSESSORS AND DEPUTY ASSESSORS.

77. In counties not under township organization.

78. Deputies.

77. In counties not under township organization.] § 72. Until provision is made by law for the election of the county assessor in counties not under township organization the county board, in said counties, shall, annually, appoint some suitable and competent person as county assessor, and the person so appointed shall hold his office for one year, subject, however, to all the fines, penalties, and removal from office, provided for in this Act. A vacancy from any cause, in the office of assessor, shall be filled by appointment by said board. [By Act approved May 2, 1873, the treasurer is made *ex officio* collector. See "Election," ¶ 24, § 1, post.

78. Deputies.] § 73. If any assessor, for any cause whatever, shall be unable to perform the duties required of him, within the time designated by law, he may, by and with the advice and consent of the chairman of the county board, or of town auditors, as the case may require, appoint one or more suitable persons to act as deputies to assist him in making the assessment, and may designate the district, or portion of the township, county, city, village or town in which such deputy or deputies are authorized to list and assess property. Such deputy assessors shall make their returns to the assessors. [See Revenue ¶ 301, § 1; ¶ 306, § 6.

OATH AND DUTIES OF ASSESSORS—ASSESSMENT OF REAL AND PERSONAL PROPERTY.

79. Oath.

80. Failure to take oath—Vacancy.

81. How and when real estate assessed.

82. Other lands added.

83. How personal property assessed.

84. When owner, etc., sick or absent.

85. Examination under oath—Witness.

86. School district to be designated.

87. When property in several districts.

88. When assessor to fix value.

89. Owner may require list of valuation.

90. Assessor to use forms.

79. Oath.] § 74. Every assessor or deputy assessor, before entering upon the duties of his office, shall take and subscribe the oath required by the constitution.¹ [See Revenue ¶ 304, § 4.

(1) The fact that an assessor was not sworn by the proper officer, will afford no ground for refusing judgment for the collection of the delinquent taxes. *Sullivan v. State of Illinois*, 66 Ill. R., 75.

Van Dusen v. The People, 78 Ill., 645; *Board of Supervisors of Du Page Co. v. Jenks*, 65 Ill. R., 275.

80. Failure to take oath—Vacancy.] § 75. If any assessor shall fail to take the oath required by this Act, his office shall become vacant; and in such case, or in case the office of assessor is vacant for any cause, the county board or town board, as the case may be, shall fill the vacancy by the appointment of some suitable person, who shall qualify and discharge the duties of such assessor till the office is otherwise filled, as required by law. [See Revenue ¶ 304, § 4, post.]

81. How and when real estate assessed.] § 76. Assessors shall, between the first day of May and the first day of July of each year, actually view and determine, as nearly as practicable, the fair cash value of each tract or lot of land listed for taxation, and set down in proper columns, in the book furnished him, the value of each tract or lot improved, the value of each tract or lot not improved, and the total value. He shall also set down, in separate columns, the number of acres in wheat, corn, oats, meadow, and other field products, in inclosed pastures, orchards and woodlands, whether inclosed or not, in that year. [As amended by Act approved June 2, 1881. In force July 1, 1881. Laws 1881, p. 134. See Revenue ¶ 312, § 12; ¶ 314, § 14, post.]

82. Other lands added.] § 77. If the assessor finds that any real estate subject to taxation, or special assessment, has not been returned to him by the clerk, or if returned, has not been described in the subdivisions, or manner required by section sixty-six (66) of this Act, he shall correct the return of the clerk; and shall list and assess such property, in the manner required by law. [As amended by Act approved and in force June 26, 1885. [See Revenue ¶ 310, § 10, post.]

83. How personal property assessed.] § 78. The assessor or his deputy shall, also, between the first day of May and July

(1) Assessors, in judging of the value of property, act judicially; and although they may err and assess it too high, this of itself, will give a court of equity no jurisdiction to interfere and restrain the collection of the tax. *Porter et al. v. R. R. I. & St. L. R. R. Co.*, 76 Ill. R., 561.

Where an officer is invested with power to make an assessment of property for taxation, and exercises such power, the assessment will be presumed to be valid until it is shown to be void. *Munson v. Miller*, 66 Ill. R., 380.

If property is valued at too great a sum, or more in proportion to other property, in the absence of fraud, or want of power, the courts can afford no relief against the over valuation. *Ottawa Glass Co. v. McCaleb, etc.*, 81 Ill. R., 557.

The courts have no power to revise the assessment of property made by the assessor, or set aside or change any value made by him, when his judgment has been honestly exercised and the assessment has been made on a right basis. *Spencer v. The People*, 68 Ill. R., 510.

Failure to assess a part will not vitiate taxes on property assessed. *Dunham v. City of Chicago*, 55 Ill. R., 357; *Peck v. City of Chicago*, 56 Ill. R., 283; *Wright v. City of Chicago*, 56 Ill. R., 284.

When an assessor acts with a fraudulent purpose, to the injury of a tax payer, the latter may be relieved, as fraud vitiates all acts. *Republic Life Ins. Co. v. Pollack et al.*, 75 Ill. R., 295.

proceed to take a list of the taxable personal property in his county, town or district, and assess the value thereof in the manner following, to-wit: He shall call at the office, place of doing business, or residence of each person required by this Act to list property, and list his name, and shall require such person to make a correct statement of his taxable property, in accordance with the provisions of this Act; and the person listing the property shall enter a true and correct statement of such property, in the form prescribed by this Act, which shall be signed and sworn to, to the extent required by this Act, by the person listing the property, and delivered to the assessor; and the assessor shall thereupon assess the value of such property, and enter the same in his book: *Provided*, if any property is listed or assessed on or after the first day of July, and before the return of the assessor's books, the same shall be as legal and binding as if listed and assessed before that time.¹ [See Revenue ¶ 315, § 15; ¶ 318, § 18, post.]

84. When owner, etc., sick or absent.] § 79. If any person required by this Act to list property shall be sick or absent when the assessor calls for a list of his property, the assessor shall leave at the office or usual place of residence or business of such person a written or printed notice, requiring such person to make out and leave at the place named by said assessor, on or before some convenient day named therein, the statement or schedule required by this Act. The date of leaving such notice, and the name of the person required to list the property, shall be carefully noted by the assessor in a book to be kept for that purpose.

85. Examination under oath—Witness.] § 80. The assessor may examine, on oath, any person whom he may suppose to have knowledge of the amount or value of the personal property which the person so refusing is required to list. The assessor may take any proper form of action to compel the attendance of a witness.

86. School district to be designated.] § 81. It shall be the duty of assessors, when making assessments of personal prop-

(1) The omission of the assessor to call on persons for a list of their taxable property, affords no ground for restraining the collection of the tax. *DuPage County v. Jenks*, 65 Ill. R., 275.

The assessor has no power after he has accepted from the owner a list and valuation of his property, arbitrarily and without notice to the owner, to alter the assessment and materially increase the valuation of his property. *First National Bank v. Cook et al.*, 77 Ill. R., 622.

In the absence of proof to the contrary, it will be presumed that an assessment of property for taxation has been properly made, and the tax levied is just and proper, and this especially where no complaint by the party assessed has been made to the township board of review, or to the county board. *Beers et al. v. The People ex rel.*, 83 Ill. R., 488.

erty, to designate the number of school district or districts in which each person assessed is liable for tax; which designation shall be made by writing the number of the district opposite each assessment, in a column provided for that purpose in the assessment book.

87. When property in several districts.] § 82. When the personal property of any person is assessable in several school districts, the amount in each shall be assessed separately, and the name of the owner placed opposite each amount. [See ¶ 24, § 23, ante.

88. When assessor to fix value.] § 83. In all cases of failure to obtain a statement of personal property, from any cause, it shall be the duty of the assessor to ascertain the amount and value of such property, and assess the same as he believes to be the fair amount and value thereof. [See ¶ 27, § 26, ante.

89. Owner may require list of valuation.] § 84. The assessor, when requested, shall deliver to the person assessed a copy of the statement of property hereinbefore required, showing the valuations of the assessor of the property so listed; which copy shall be signed by the assessor. [See ¶ 327, § 27, Revenue Act, post.

90. Assessor to use forms.] § 85. Assessors, in the execution of their duties, shall use the forms and pursue the instructions which shall, from time to time, be transmitted to them by the auditor, or that may be furnished to them by the county clerk (supervisor of assessments) or other officer, in pursuance of law. [See ¶ 302, § 2.

REVIEW OF ASSESSMENT BY TOWN BOARD, IN COUNTIES UNDER TOWNSHIP ORGANIZATION.

91. Review of assessment—Time—Proceedings.

92. Notice of meeting.

93. Failure, not to vitiate, except, etc.

91. Review of assessment—Time—Proceedings.] § 86. In counties under township organization the assessor, clerk and supervisor of the town shall meet on the fourth Monday of June for the purpose of revising the assessment of property in such town. And on the application of any person considering himself aggrieved or who shall complain that the property of another is assessed too low, they shall revise the assessment and correct the same as shall appear to them just. No complaint that another is assessed too low shall be acted upon until the person so assessed or his agent shall be notified in writing of such complaint of a resident of the county.

Any two of such officers meeting are authorized to act, and they may adjourn from day to day upon notifying those present of the date to which they adjourn until they shall have finished the hearing of all cases presented to them.

Property assessed after the fourth Monday of June, and all other property whereof the owner or his agent has made application to the town board to have the assessment on the same revised as provided by this section, and has given notice in writing to said board that he will appeal from its decision to the county board shall be subject to complaint to the county board and the county board shall revise and correct the assessment upon the same upon application of the owner or his agent, as provided by section 97 of this Act, and if it shall appear that the same has been assessed higher in proportion than other lands in the same neighborhood, the county board shall revise and correct the same and make such reduction in said assessment as shall be just and right. [As amended by Act approved June 17, 1891. In force July 1, 1891. Laws 1891, p. 187. See Revenue, ¶ 323, § 23; ¶ 344, § 44, post.

92. Notice of meeting.] § 87. The assessor shall cause at least ten days' previous notice of the time and place of such meeting, to be given by posting notices in at least three public places in such town. [See Revenue, ¶ 323, § 23; ¶ 344, § 44, post.

93. Failure not to vitiate, except, etc..] § 88. The failure to give such notice or hold said meeting shall not vitiate such assessment, except as to the excess of valuation or tax thereon shown to be unjustly made or levied. [See Revenue, ¶ 197, § 191; ¶ 286, § 280; ¶ 289, § 283, post.

RETURN OF ASSESSOR TO COUNTY CLERK.

94. Assessor to add columns—Tabular statements.

95. Return.

96. Schedules and statements delivered, etc.

97. Books delivered to town clerk—Review of assessment.

94. Assessor to add columns—tabular statements.] § 89. The assessor shall add up and note the aggregate of each column

The courts are powerless to revise an assessment or change or set aside a valuation of property made by an assessor, or by the boards authorized by law to review the same, where the assessment has been honestly made on property subject to taxation and on the proper basis. Such assessment cannot be impeached or set aside, except for fraud or want of jurisdiction of the property. 122 Ill. R., 297.

Where a deputy assessor views the property and sets down in the proper column its fair cash value as determined by him, it can make no difference that he supposed his work was subject to review by someone else, or that his assessment would be reduced in amount, and his statement to the owners that reduction would be made affords no valid reason for their not appearing before the board of review and seeking a reduction of the valuation. Ibid. 297.

The law requires that all taxable property be assessed at its fair cash value, and the fact that some property may be assessed at only one-third that value will not render invalid an assessment of other property as its cash value. Ibid. 297.

in his assessment books of real and personal property, and shall also add in each book, under proper headings, a tabular statement, showing the footings of the several columns upon each page; and shall add up and set down, under the respective headings, the totals of the several columns. When an assessor returns several assessment books of real or personal property, he shall, in addition, to the tabular statements herein required, return a statement in like form showing the totals of all the books. [As amended by Act approved June 2, 1881. In force July 1, 1881. Laws 1881, p. 134.]

95. Return—Form.] § 90. The assessor shall, on or before the first day of July of the year for which the assessment is made, return his assessment books to the county clerk, verified by his affidavit, substantially in the following form:¹

State of Illinois, }
 _____ County, } ss.

I, _____, assessor of _____, do solemnly swear that the book to which this is attached contains a correct and full list of all the real property (or "personal property," as the case may be), subject to taxation in, _____, so far as I have been able to ascertain the same; and that the assessed value set down in the proper column opposite the several kinds and descriptions of property is, in each case, the fair cash value of such property, to the best of my knowledge and belief, (where the assessment has been corrected by a town board, "except as corrected by the town board,") and that the footings of the several columns in said book, and tabular statement returned herewith, are correct, as I verily believe.

[As amended by Act approved June 2, 1881. In force July 1, 1881. Laws 1881, p. 134. See Revenue, ¶ 321, § 21; ¶ 328, § 28, post.]

96. Schedules and statements delivered, etc.] § 91. The assessor shall at the same time deliver to the county clerk all the schedules and statements of personal property which shall have been received by him, indorsed with the name of the person whose property is listed, and arranged in alphabetical order; and the clerk shall preserve the same in his office for two years thereafter.² [See Revenue, ¶ 328, § 28.]

97. Books delivered to town clerk—Review of assessment.] § 92. The several assessment books shall be filed in the office of the county clerk, and there remain open to the inspection of

(1) A failure of a town assessor to make return of the assessment books to the county clerk, on or before the first of July, of the year when the assessment was made will not render the assessment invalid. *Purrington et al. v. The People ex rel.*, 73 Ill. R., 11; *Enright v. The People ex rel.*, 79 Ill. R., 214. See post, ¶ 286, § 280.

(2) The lists under the above provision cannot lawfully be returned to the town clerk, even if so required by the town authorities. If they are so returned and filed by the town clerk, he cannot recover therefor for filing them. No obligation is thereby imposed on the town. *Town of Charlestown v. McCrory*, 36 Ill. R., 456.

all persons: *Provided*, that the county clerk shall, in the month of April, deliver to the town clerks of the several towns in the county, the assessment books of their respective towns for the previous year, such books to be returned by the town clerks to the county clerk's office before the first of July of the same year. [As amended by Act approved June 2, 1881. In force July 1, 1881. Laws 1881, p. 134. See Revenue, ¶ 321, § 21; ¶ 328, § 28.]

PAY OF ASSESSORS AND DEPUTY ASSESSORS.

98. Compensation of assessors.

99. Detailed account of time, etc.

98. Compensation of assessors.] § 93. The pay of assessors and deputy assessors shall, from time to time, in counties not under township organization be determined and fixed by the county board, and in counties under township organization, by the town board of auditors. Such pay shall be for the time necessarily employed in making the assessment, to be paid county assessors and their deputies out of the county treasury, and town assessors and their deputies out of the town treasury. [See Revenue, ¶ 302, § 2, post; Township Organization Act, ¶ 144, § 1, ante.]

99. Detailed account of time, etc.] § 94. Assessors and deputy assessors shall make out their accounts in detail, giving the date of each day which they shall have been employed, which account they shall verify under oath. The assessor shall not be entitled to compensation until he shall have filed the lists, schedules, statements and books appertaining to the assessment of property for such year, in the office of the county clerk—the books to be accurately made and added up. An assessor or deputy assessor shall not be entitled to pay unless he has performed the labor and made return in strict compliance with law.

DUTIES OF CLERK ON RETURN OF ASSESSMENT BOOKS.

100. Clerk to correct errors, etc.

101. Further corrections.

100. Clerk to correct errors, etc.] § 95. The clerk, upon receipt of the assessment books of real property, shall correct all errors of whatsoever kind which he may discover, and add the name of the owner, if known, when the same does not already appear, and the description of all real property which has been omitted by the assessor, and is liable to taxation. [See Revenue, ¶ 282, § 276, post.]

101. Further corrections.] § 96. If the assessor has listed and assessed any real property not returned by the auditor to the

clerk, the clerk shall immediately advise the auditor thereof, who shall ascertain if the same is taxable, and advise the clerk. If taxable, the clerk shall enter the same in the list of taxable property in his office; if not, he shall correct the assessment books.

EQUALIZATION OF ASSESSMENTS BY THE COUNTY BOARD.

102. At July meeting.

103. County board may complete equalization at subsequent meeting.

102. At July meeting.] § 97. The county board, at a meeting to be held for the purpose contemplated in this section, on the second Monday in July, annually, after the return of the assessment books, shall—

First—Assess all such lands or lots as have been listed by the county clerk, and not assessed by the assessor. Said board may make such alterations in the descriptions of real property as it shall deem necessary.

Second—On the application of any person considering himself aggrieved or who shall complain that the property of another is assessed too low, they shall review the assessment and correct the same as shall appear to be just. No complaint that another is assessed too low shall be acted upon until the person so assessed or his agent shall be notified of such complaint, if a resident of the county.

Third—To hear and determine the application of any person who is assessed on property claimed to be exempt from taxation. If the board shall decide that any such property is not liable to taxation, and the question as to the liability of such property to taxation has not been previously determined, as hereinafter provided, the decision of said board shall not be final, unless approved by the Auditor of Public Accounts; and it shall be the duty of the county clerk, in all such cases, to make out and forward to the auditor a full and complete statement of all the facts in the case. If the auditor is satisfied that such property is not legally liable to taxation, he shall notify the clerk of his approval of the decision of the board, and the said clerk shall correct the assessment accordingly. But if the auditor is satisfied that such property is liable to taxation, he shall advise the clerk of his objection to the decision of the board, and give notice to said clerk that he will apply to the Supreme Court in either division, specifying at what term thereof, for an order to set aside and reverse the decision of the county board. Upon the receipt of such notice, the clerk shall notify the person making the application aforesaid. It shall be the duty of the auditor to file in the Supreme Court a certified statement of the facts, certified by the clerk, as aforesaid, together with his objections thereto, and the

court shall hear and determine the matter as the right of the case may be. If the board shall decide that property so claimed to be exempt is liable to be taxed, and the party aggrieved shall at the time pray an appeal, a brief statement in the case shall be made by the clerk, and transmitted to the auditor, who shall present the case to the Supreme Court in like manner as hereinbefore provided. In either case, the collection of the tax shall not be delayed thereby, but in case the property is decided to be exempt, the tax shall be abated or refunded.

Fourth—It shall ascertain whether the valuations in one town or district bear just relation to all the towns or districts in the county; and may increase or diminish the aggregate valuation of property in any town or district, by adding or deducting such sum upon the hundred as may be necessary to produce a just relation between all the valuations of property in the county, but shall, in no instance, reduce the aggregate valuation of all the towns or districts, below the aggregate valuation thereof, as made by the assessors; neither shall it increase the aggregate valuation of all the towns or districts, except in such an amount as may be actually necessary and incidental to a proper and just equalization. It may consider lands, town or city lots, personal property, and railroad property (except “railroad track” and “rolling stock,”) separately, and determine a separate rate per cent. of addition or reduction for each of said classes of property, as may be necessary to a just equalization of the assessed value of said classes of property within the respective towns, and of the same between the several towns or districts in the county. If the county board of any county shall find the aggregate assessment of the county is too high or too low, or is generally so unequal as to render it impracticable to equalize such assessment fairly, they may set aside the assessment of the whole county or of any township or townships therein, and order a new assessment, with instructions to the assessors to increase or diminish the aggregate assessment of such county or township, as the case may be, by such an amount as said board may deem right and just in the premises, and consistent with this Act.¹ [See Revenue, ¶ 330, § 30; ¶ 344, § 44, post.

103. County board may complete equalization at subsequent meeting.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That in any case where the county board of any county shall have failed to complete the equalization of assessments, as returned, for any year, at the meeting held on the second Monday in July, or shall have failed

(1) *First National Bank of Shawneetown v. Cook et al.*, 77 Ill., 622; *Adsit v. Lieb*, 76 Ill., 198.

to act upon a complaint that another is assessed too low at such a meeting, the equalization of such assessment, or action upon such complaint by the county board at any subsequent meeting thereof, is hereby declared legal and valid, and the taxes extended thereon shall be and remain a lien on the property against which they are extended, to the same extent as if such equalization and action upon complaint had been had and taken on the second Monday in July.

Whereas, In some of the counties of this State, it was impossible to equalize all the assessments and act upon the complaints of low assessment at the meeting heretofore designated by law, and therefore an emergency exists to legalize equalizations heretofore made; this Act shall take effect and be in force from and after its passage. [See Revenue, ¶ 330, § 30; ¶ 344, § 44, post.

REPORT OF ASSESSMENT BY THE CLERK TO THE AUDITOR FOR EQUALIZATION.

104. Clerk's report to auditor.

105. When assessments not all in.

104. **Clerk's report to auditor.]** § 98. On or before the tenth day of July, annually, it shall be the duty of the county clerks, upon the receipt of the assessment books, to make out and transmit to the auditor an abstract of the assessment of property, showing the number, value and average value of each kind of enumerated property as shown by the assessment; the value of each item of unenumerated property, and total value of personal property; the length of main track, the length of side track, and the numbers, values and average values of each separate item of railroad property; the number of acres, value and average value of improved lands; the number of acres, value and average value of unimproved lands; the total number of acres, total value and average value, per acre, of all lands; the number, value and average value of improved town and city lots; the number, value and average value of unimproved town and city lots; the total number of lots, total value and average value of all lots, and the total value of all property; the number of acres in cultivation of wheat, corn, oats, meadow, and other field products, in inclosed pasture, orchards and woodland, whether inclosed or not in that year. Said abstracts shall be made out on blanks, which it shall be the duty of the auditor to furnish the county clerks for that purpose. The values to be given in said abstract shall be the assessed valuations, except in the case of railroad property, denominated "railroad track" and "rolling stock," the value of which shall be given as returned by the railroad company to the

county clerk. The county clerk shall, at the same time and accompanying said abstract, furnish a detailed statement of the railroad property denominated "railroad track" and "rolling stock," reported by each road located in or through their counties. If there are any roads so located that have not made their reports as required by this Act, the clerk shall report the fact, giving the name of such railroad. [As amended by Act approved June 2, 1881. In force July 1, 1881. Laws 1881, p. 135. See Revenue, ¶ 347, § 47, post.]

105. When assessments not all in.] § 99. It shall be the duty of the county clerks, in case of failure of any assessor to make return of assessment within the time specified in this Act, to transmit a statement of the assessment in all the towns or districts from which returns have been received, together with a statement of the amount of taxable property assessed in the defaulting towns or districts for the previous year.

STATE BOARD OF EQUALIZATION.

- 106. Members.
- 107. Election—Term of office—Vacancy.
- 108. Oath.
- 109. Chairman—Secretary—Employes.
- 110. Duties of secretary.
- 111. Annual meeting of board.
- 112. Property to be classified.
- 113. Rule for equalizing personal property.
- 114. Board to assess capital stock of corporations, except, etc.—Extension of tax.
- 115. Board to assess "railroad track" and "rolling stock"—etc.
- 116. Capital stock of railroads and telegraphs—distribution of value, etc.
- 117. Lands, how equalized.
- 118. Combined table—Final examination.
- 119. Failure to return assessments.
- 120. When equalization complete.
- 121. Proceedings of board published, etc.
- 122. Rooms, fuel, etc.—Compensation.

106. Members.] § 100. The State Board of Equalization shall, at the expiration of the term of office of the members now forming said board, consist of one member from each congressional district in the state, elected as hereinafter provided, and the auditor of public accounts.

The constitutional provision which requires the value of personal property for taxation "to be ascertained by some person or persons to be elected or appointed in such manner as the General Assembly may direct and not otherwise," does not prohibit it from creating a State Board of Equalization and investing it with power to equalize the assessment of the different counties, for the purpose of producing uniformity in the valuation. *Adsit v. Lieb*, 76 Ill. R., 198.

No constitutional mandate is violated in making the State Board of Equalization the exclusive judges of the value of any and all property. *Pacific Hotel Co. v. Lieb*, et al., 83 Ill. R., 602.

The increase or reduction, determined by the State Board of Equalization to be

107. Election—Term of office—Vacancy.] § 101. The qualified electors of each congressional district shall, at the general election in November, 1872, and every four years thereafter, elect one of their number to serve as a member of said Board of Equalization, who shall hold his office for four years, and until his successor is elected and qualified. The returns of the poll-books and certificates of election shall be governed by the laws regulating the election of members of congress; and in case of vacancy occurring in said board by death, resignation or otherwise, it shall be the duty of the governor to appoint some person (having the qualifications of an elector in the district in which such vacancy occurs) to fill the same until the next regular election for members of said board. [See ¶ 28 § 25, "Elections," post.

108. Oath.] § 102. Each member of said board, before entering upon the duties of his office, shall take the oath (or affirmation) prescribed by the constitution of this State.

109. Chairman—Secretary—Employes.] § 103. At the first meeting of said board, quadrennially, it shall organize by selecting one of its members as chairman, and appointing a secretary; and may, from time to time, select such employes as may be deemed necessary. The secretary shall take the oath prescribed by the Constitution.

110. Duties of secretary.] § 104. It shall be the duty of the secretary of said board, under the direction of the auditor of public accounts, to compile the abstracts of assessments received from the county clerks into tabular statements, convenient for the use of the board; which statements and the original abstracts shall be submitted to the board on the first day of its session in each year, or as soon thereafter as the board is organized. The secretary shall perform such duties in vacation as shall be assigned to him by the board.

made on the assessment of property in any county, should be extended on the valuation as equalized by the board of supervisors. As to moneys and credits, it is considered that they are affected in precisely the same way, and to the same extent as other property by the action of the State board. Opinion Auditor Miner, Oct. 3, 1867.

The equalization law intends that the rate of deduction or addition determined by the State Board of Equalization, shall be applied to the assessed value of property in the counties, after all the corrections and equalizations have been made by the county authorities. The law does not require any county, town or individual to pay a specific amount as tax; the requirement is (and no other would be constitutional) that each person and corporation "shall pay a tax in proportion to the value of his or her property," and certain rates of tax are imposed on the valuation of all property, as assessed, corrected, and equalized. Opinion Auditor Miner, Nov. 13, 1868.

The State Board of Equalization, in assessing property of corporations, does not act as a board of review, as in respect to other kinds of property, but as an original assessor. *Pacific Hotel Co, v. Lieb, et al.*, 83 Ill., R., 602.

111. Annual meeting of board.] § 105. Said board shall assemble at the State Capital on the second Tuesday in the month of August, annually, and examine the abstracts of property assessed for taxation in the several counties of this State, as returned to the auditor, and shall equalize the assessments as hereinafter provided: but said board shall not reduce the aggregate assessed valuation in the State; neither shall it increase said aggregate valuation, except in such an amount as may be reasonably necessary to a just equalization, and not exceeding one per cent. on such aggregate assessed valuation; but this rule shall not apply to railroad property.¹ [Modified by Revenue Act of 1898. See ¶ 352, § 50; ¶ 353, § 51; ¶ 355, § 53, post.]

112. Property to be classified.] § 106. Said board in equalizing the valuation of property as listed and assessed in the different counties, shall consider the following classes of property separately, viz: personal property, railroad and telegraph property, lands, and town and city lots; and, upon such consideration, determine such rates of addition to or deduction from the listed or assessed valuation of each of said classes of property in each county, or to or from the aggregate assessed value of each of said classes in the State, as may be deemed by the board to be equitable and just—such rates being in all cases even and not fractional; and such rates, as finally determined by said board, shall not be combined.

113. Rule for equalizing personal property.] § 107. In equalizing the value of personal property between the several counties, said board shall cause to be obtained the State averages of the several kinds of enumerated property, from the aggregate footings of the number and value of each; and the value of the several kinds of enumerated property in each county shall be obtained at those average values; and the value of enumerated property thus obtained, as compared with the assessed value of such property in each county, shall be taken by said board to obtain a rate per cent, to be added to or deducted from the total assessed value of personal property in each county: *Provided*, that whenever in the opinion of the board it is necessary, to a more just and equitable equalization of personal property, that a rate per cent. be added to or deducted from the value thus obtained in any one or more of the counties, said board shall have the right so to do; but the rate per cent. hereinbefore required shall first be obtained to form the basis upon which the equalization of personal property shall be made.

(1) *Adslit v. Lieb, et al.*, 76 Ill., 198; *Western Union Telegraph Co. v. Lieb*, 76 Ill., 172; *Porter v. R. R. I. & St. L. R. R. Co.*, 76 Ill., 561; *C. B. Q. R. R. Co. v. Cole*, 75 Ill., 591.

114. Board to assess capital stock of corporations, except, etc.—Extension of tax.] § 108. The State Board of Equalization shall assess the capital stock of each company or association, respectively, now or hereafter incorporated under the laws of this State, and which by this Act are expressly required to be assessed by the State Board of Equalization in the manner hereinbefore in this Act provided. But the State Board of Equalization shall not assess the capital stock of companies and associations organized for purely manufacturing and mercantile purposes or for either of such purposes, or for the mining or sale of coal, or for printing, or for the publishing of newspapers, or for the improving and breeding of stock. The respective assessments so made (other than of the capital stock of railroad and telegraph companies) shall be certified by the Auditors, under direction of said board, to the county clerk of the respective counties in which such companies or associations are located, and said clerk shall extend the taxes for all purposes on the respective amounts so certified the same as may be levied on the other property in such towns, districts, villages or cities in which such companies or associations are located.¹ [As amended by Act in force July 1, 1905. Laws 1905, p. 353.]

115. Board to assess “railroad track” and “rolling stock”—Distribution of values—Extension of tax.] § 109. Said board shall also assess the railroad property denominated in this Act as “railroad track” and “rolling stock”; and said board is hereby given the power and authority, by committee or otherwise, to examine persons and papers. The amount so determined and assessed shall be certified by the auditor to the county clerks of the proper counties. The county clerk shall, in like manner, distribute the value, so certified to him by the auditor, to the county and to the several towns, districts, villages and cities in his county entitled to a proportionate value of such “railroad track” and “rolling stock.” And said clerk shall extend taxes against such values, the same as against other property in such towns, districts, villages and cities.

116. Capital stock of railroads and telegraphs—Distribution of value—Extension of tax.] § 110. The aggregate amount of capital stock of railroad or telegraph companies assessed by said board shall be distributed proportionately by said board to the several counties in like manner that the property of railroads denominated “railroad track” is distributed. The amount so de-

(1) It is not required that a corporation, whose property is assessed for taxation by the State Board of Equalization, shall be notified of the assessment or the rules adopted whereby to determine the value of the property, and no right of appeal is given from the assessment. *Porter et al. v. R. R. I. & St. L. R. R. Co.* 76 Ill. R., 561; *Adsit v. Lieb et al.*, 76 Ill. R., 201. *Western Union Telegraph Co. v. Lieb, et al.*, 76 Ill., 172.

terminated shall be certified by the auditor to the county clerks of the proper counties. The county clerk shall, in like manner, distribute the value, so certified to him by the auditor, to the county and to the several towns, districts, villages and cities in his county entitled to a proportionate value of such capital stock. And said clerk shall extend taxes against such values the same as against other property in such towns, districts, villages and cities.

117. Lands, how equalized.] § 111. Lands shall be equalized by adding to the aggregate assessed value thereof, in every county in which said board may believe the valuation to be too low, such rate per centum as will raise the same to its proper proportionate value, and by deducting from the aggregate assessed value thereof, in every county in which said board may believe the valuation to be too high, such per centum as will reduce the same to its proper value. Town and city lots shall be equalized in the same manner herein provided for equalizing lands, and, at the option of said board, may be combined and equalized with lands.

118. Combined table—Final examination.] § 112. When said board shall have separately considered the several classes of property as hereinbefore required, the results shall be combined into one table, and the same shall be examined, compared and perfected, in such manner as said board shall deem best to accomplish a just equalization of assessments throughout the State, preserving, however, the principle of separate rates for each class of property.

119. Failure to return assessments.] § 113. In all cases of partial return from any county where the number of defaulting towns or districts do not exceed one-third of the whole number of towns or districts in the county, the board of equalization may estimate the valuation in the towns or districts from which returns have not been received, and may equalize the total valuation as in other cases. In cases where the defaulting towns or districts exceed in number one-third of the whole number of towns or districts in the county, and in all cases of failure on the part of any county clerk to furnish the proper returns of the assessment of his county to the auditor prior to or during the meeting of the board of equalization in each year, said board may, by order, authorize the auditor to equalize the assessment of such county when full returns have been received by him.

120. When equalization completed.] § 114. When said board shall have completed its equalization of assessments, for

any year, the chairman and secretary shall certify to the auditor the rates finally determined by said board to be added or deducted from the listed or assessed valuation of each class of property in the several counties, and also the amounts assessed by said board; and it shall be the duty of said auditor, under his seal of office, to report the action of the board to the several county clerks, immediately after the adjournment of said board.

121. Proceedings of board published, etc.] § 115. A report of the proceedings of said board of equalization shall be published annually, in pamphlet form, and five thousand copies thereof printed, of which number each member shall be entitled to fifty copies, the auditor to five hundred copies, and the remainder thereof shall be distributed by the secretary of state to the several counties, in the proportion usual in similar cases. Said distribution shall be made by mail or express, immediately upon the receipt of said report from the public printer, the cost of such distribution to be paid by the secretary of state out of the appropriation for incidental expenses. [See Revised Stat. Chap. 127, § 29.

122. Rooms, fuel, etc.—Compensation.] § 116. The secretary of state shall furnish such printing, fuel, lights and rooms as may be necessary for the transaction of the business of said board. Each member of said board shall receive for his services the sum of \$5 per day during its sessions, and ten cents per mile for each mile necessarily traveled in going to and returning from the seat of government, to be computed by the auditor of public accounts, and no other allowance or emolument, directly or indirectly, for any purpose whatever, except the sum of \$10 per session to each member, which shall be in full for postage, stationery, newspapers, and all other incidentals and perquisites. The pay and mileage allowed to each member of said board and the pay allowed to its secretaries and employees, shall be certified by the chairman of the board to the Auditor of Public Accounts, who shall issue his warrants on the state treasurer therefor. Said board may employ one page, at \$2 per day; one secretary at \$5 per day; and one janitor or doorkeeper, at \$3 per day, and such clerks as may be necessary for the transaction of the business of the board, at \$5 per day. Two-thirds of the whole number of members shall constitute a quorum, and said board may adjourn from time to time until the business before it is disposed of. Beginning with the term of office of the State board to be elected at the general election in November, A. D., 1908, each member of said board shall receive for his services the sum of \$1,000 per annum, and ten cents per mile necessarily

traveled in going to and returning from the seat of government, to be computed by the Auditor of Public Accounts, and no other allowance or emolument, directly or indirectly, for any purpose whatever, except the sum of \$10 per session to each member, which shall be in full for postage, stationery, newspapers, and all other incidentals and perquisites. The pay and mileage allowed to each member of said board, and the pay allowed to its secretaries and employes shall be certified by the chairman of the board to the Auditor of Public Accounts, who shall issue his warrants on the State Treasurer therefor. [As amended by Act approved June 4, 1907. In force July 1, 1907. Laws 1907, p. 494.]

RATES OF TAXATION.

123. Computing rates.

123. Computing rates.] § 117. All rates for taxes, hereinafter provided for, shall be computed by the county clerk on the assessed valuation of property as equalized and assessed by the State Board of Equalization, for State purposes, and on the assessed valuation of property as equalized and assessed by the county board of review and all property assessed by the State Board of Equalization, for other taxes. [As amended by Act approved May 10, 1901. In force July 1, 1901. Laws 1901, p. 272. See Revenue ¶ 134, § 128, post.]

FOR STATE PURPOSES. (1)

124. How rate found, etc.

125. State school tax.

126. State revenues.

124. How rate found, etc.] § 118. The Governor, Auditor and Treasurer shall, annually, on the completion of the assessment and equalization of property, ascertain the rate per cent. required to produce the amount of taxes levied by the General Assembly. [See Revenue ¶ 349, § 49, post.]

125. State school tax.] § 119. There shall be annually assessed and collected, at the same time and in the same manner as other State taxes, such rate of tax on the equalized valuation of the property of this State, as is or may be provided by the laws concerning free schools, which tax shall be denominated the

(1) The county clerk has no discretion in acting under the orders of the board of supervisors, in extending taxes upon their equalization, and if he refuses to extend the tax upon their equalization, he does so at his peril, and can only justify such refusal on the ground that to do so would violate the Constitution of the State. An equalization by the board of supervisors, made by arbitrarily fixing the value of improved lands in each town at a uniform specified valuation, is illegal, and hence, if the clerk disregards such equalization and extends the tax on the assessor's return, the tax is not thereby vitiated or rendered illegal. *Mix v. The People*, 72 Ill. R., 241.

"State school tax," and the moneys arising therefrom be distributed in such manner as is or may be provided by the laws of this State concerning free schools; and no part of the fund raised by the aforesaid tax shall be diverted to or used for any other purpose than the support and maintenance of free schools in this State. [See Revenue, ¶ 349, § 49, post.]

126. State revenues.] § 120. The auditor shall, annually, compute and certify to the county clerks such separate rates per cent. as will produce the net amount of State taxes authorized to be levied—

First—For revenue purposes, to be designated "State fund."

Second—For interest purposes, to be designated "Interest fund."

Third—For State school purposes, to be designated "State school fund."

Fourth—For such other taxes as may be required by law to be levied by him.

The "Interest fund" tax shall be levied only so long as the same may be necessary, and shall be applied to the payment of interest only. [See Revenue ¶ 349, § 49, post.]

FOR COUNTY PURPOSES.

127. County board to determine.

127. County board to determine.] § 121. The county board of the respective counties shall, annually, at the September session, determine the amount of all county taxes to be raised for all purposes. The aggregate amount shall not exceed the rate of seventy-five cents on the one hundred dollars' valuation, except for the payment of indebtedness existing at the adoption of the present State Constitution, unless authorized by a vote of the people of the county. When for several purposes, the amount for each purpose shall be stated separately:¹ *Provided, however,* that in all counties where, under any law, the county board is or may be required to pass an annual appropriation bill within the first quarter of the fiscal year, the tax levy above provided for may be made at any time after such annual appropriation bill shall be in full force and effect. [As amended by Act approved

No order or resolution of the county board is necessary to authorize the county clerk in levying and extending State taxes. It is his duty to do so under the statute. *Chiniquy v. The People ex rel.*, 78 Ill. R., 560.

A court of equity will never restrain the extension of a tax on the tax books, unless it is wholly unauthorized and void in all its parts. If any portion of the tax is valid, the court will never interpose, until the taxes have been extended, and not then, until the tax payer has paid or tendered such taxes as are legal. *Ottawa Glass Co. v. McCaleb*, 81 Ill R., 557.

June 14, 1909. In force July 1, 1909. Laws 1909, p. 325. See Revenue, ¶349, § 49; ¶ 301, § 1, post.

TOWNS, CITIES, ETC.

128. Certificate of rates.

128. Certificate of rates.] § 122. The proper authorities of towns, townships, districts, and incorporated cities, towns and villages, collecting taxes under the provisions of this Act, shall annually, on or before the second Tuesday in August, certify to the county clerk the several amounts which they severally require to be raised by taxation, anything in their respective charters, or in Acts heretofore passed by the General Assembly of this State, to the contrary notwithstanding.² [As amended by Act approved May 3, 1873. See "Revised Statutes," Chap. 24, § 111, and Revenue Act of 1898, ¶ 349, § 49, post.

COLLECTORS' BOOKS—EXTENDING RATES.

- 129. Collectors' books.
- 130. How made as to townships, cities, etc.
- 131. Rates—How extended—Valuation—Equalization.
- 132. Rates—how extended.
- 133. Extension of town, city, etc., taxes.
- 134. State and other taxes.
- 135. Forfeited property—Back taxes.
- 136. Statement to auditor.
- 137. State and county equalized rates stated.
- 138. Collector's warrant—Direction to pay over.

129. Collector's books.] § 123. The county clerk shall annually, make out for the use of collectors, in books to be furnished by the county, correct lists of taxable property, as assessed and equalized. [As amended by Act approved June 2, 1881. In force July 1, 1881. Laws 1881, p. 135.

(1) "Levy" as applied to a tax, imports the ascertainment of the amount to be raised, and the performance of such acts as would authorize the tax collector to proceed to collect. *Handy, J., in Moore v. Foote*, 32 Miss. R., 469, 479.

The levy of a special tax for purposes not authorized by law, is void. But when authority exists to levy a tax to pay existing indebtedness, the levying of a tax in connection therewith not authorized, does not render the entire levy void, if the authorized tax can be separated from that unauthorized. *Allen, etc., v. Peoria, etc., R. Co.*, 44 Ill. R., 85. See also, *Briscoe v. Allison*, 43 Ill. R., 29.

A court of equity will not enjoin a tax for mere errors, if it is attempted to be levied by an officer, de facto, under authority incident to his office; but may do so if the levy is by one without pretense of authority or color of office, to which such right is an incident. *Munson v. Minor*, 22 Ill. R., 602.

The board of supervisors have no authority to instruct the county treasurer to withhold any part of the State tax. In case of an injunction restraining the collection of tax, the amount of the State tax thus enjoined may be certified by the county clerk as a separate item of credit, and it will be allowed by the auditor, conditionally, until the injunction case is decided. *Opinion Auditor Miner*, June 13, 1868.

(2) The failure of the town clerk to certify the levy of a town tax to the county clerk, within the time required by law, does not invalidate the tax. *Thatcher v. The People ex rel.*, 79 Ill., R., 597.

130. How made as to townships, cities, etc.] § 124. In counties not under township organization, such book shall be made up by congressional townships; but parts of fractional townships, less than full townships, may be added to full townships, at the discretion of the county board. In counties under township organization, said books shall be made to correspond with the organized townships. Separate books may be made for the collection of all taxes within the corporate limits of cities, towns and villages. This section shall not be construed to interfere with the tax book provided for in this Act, for the use of county collectors, for collecting all taxes charged against railroad property and the capital stock of telegraph companies. [Added by amendment approved June 2, 1881. In force July 1, 1881. Laws 1881, p. 136.]

131. Rates — How extended — Valuation — Equalization.] § 125. The respective county clerks shall cause the collector's books to be properly ruled for the several classes of property, providing for each class three columns for values,—the first to show the assessed valuation; the second to show the valuation as corrected and equalized by the county board, and the third to show the valuation as equalized or assessed by the State Board of Equalization. Said books to contain proper columns for the extension of the several kinds of taxes, and other purposes, and to contain proper columns to insert opposite each piece, lot or tract of land any sales made of the same for taxes or special assessments for the two preceding years not cancelled, "such tax sales shall be designated by the word 'sold' to be stamped in the proper column opposite the respective lot or tract of land not released prior to December 1st, of each year," and the several collectors shall stamp or cause to be stamped upon all receipts given for taxes the information in said column, to be known as the tax sale column. [As amended by Act approved and in force June 19, 1893. Laws 1893, p. 171. See Revenue, ¶ 318, § 18; ¶ 349, § 49, post.]

132. Rates—How extended.] § 126. Said clerks shall extend the rates of addition or deduction ordered by the county board and State Board of Equalization, in the several columns provided for that purpose. The rates per cent, ordered by the State Board of Equalization shall be extended on the assessed valuation of property, as corrected and equalized by the county board—except, that in case of railroad property denominated "railroad track" and "rolling stock" said rates shall be extended on the listed valuations of such designated property. In all cases of extension of valuations, where the equalized valuation shall happen to be fractional, the clerk shall reject all such frac-

tions as may fall below fifty cents; fractions of fifty cents or more shall be extended as one dollar. [As amended by Act approved June 2, 1881. In force July 1, 1881. Laws 1881, p. 135. See Revenue, ¶ 318, § 18; ¶ 349, § 49, post.

133.—Extension of towns, cities, etc., taxes.] § 127. The said clerks shall estimate and determine the rate per cent. upon the proper valuation of property in the respective towns, townships, districts and incorporated cities, towns and villages in their counties, that will produce, within the proper divisions of such counties, not less than the net amount of the several sums that shall be required by the county board, or certified to them according to law. [See Revenue, ¶ 318, § 18; ¶ 349, § 49, post.

134. State and other taxes.] § 128. All State taxes shall be extended by the respective county clerks upon the property in their counties, upon the valuation produced by the equalization and assessment of property by the State Board of Equalization. All other taxes shall be extended upon the valuation produced by the equalization and assessment of property by the county board of review and all property originally assessed by the State Board of Equalization. In the extension of taxes the fraction of a cent shall be extended as one cent. [As amended by Act approved May 10, 1901. In force July 1, 1901. Laws 1901, p. 272. See Revenue, ¶ 318, § 18; ¶ 349, § 49, post.

135. Forfeited property—Back taxes.] § 129. In all cases where any real property has heretofore been or may hereafter be forfeited to the State for taxes, it shall be the duty of the clerk, when he is making up the amount of tax due on such real property for the current year to add the amount of back tax, interest, penalty and printer's fees remaining due on such real property, with one year's interest at ten per cent. on all taxes heretofore forfeited, and twenty-five per cent. on all taxes hereafter levied and forfeited on the amount of tax due, to the tax of the current year, and the aggregate amount so added together shall be collected in like manner as the tax on other real property for that year may be collected: *Provided*, that the county clerk shall first carefully examine said list, and strike out therefrom all errors, and otherwise make such corrections as may be necessary with respect to such property or tax. (See Revenue, ¶ 235, § 229, post.) [As amended by Act approved May 31, 1879. In force July 1, 1879. Laws 1879, p. 253.

136. Statement to Auditor.] § 130. When the books or lists for the collectors are completed, the county clerk shall make a complete statement of the assessment and taxes charged, on

blanks, and in conformity to instructions furnished to him by the Auditor. The clerk shall record said statement and forward it, properly certified, to said auditor.

137. State and county equalized rates stated.] § 131. It shall be the duty of the county clerk to make, in each collector's book, a certificate of the rate of deduction or addition determined by the State Board of Equalization in the county to which such books shall pertain; and, also, the rate of addition or deduction determined by the county board in the town, district, city or village to which such book shall pertain. [See Revenue, ¶ 132, § 126, ante.

138. Collector's warrant—Direction to pay over.] § 132. To each collector's book, a warrant, under the hand and official seal of the county clerk, shall be annexed, commanding the collector to collect from the several persons named in said book, the several sums entered in the column of totals opposite their respective names. The warrant shall direct the collector to pay over the several kinds of taxes that may be collected by him, to the respective officers entitled thereto, less the compensation for collection allowed him by law.¹ [As amended by Act approved June 2, 1881. In force July 1, 1881. Laws 1881, p. 136.

QUALIFICATION OF TOWN AND DISTRICT COLLECTORS.

139. Bond—Oath.

140. Bond and oath recorded—Lien of bond.

139. Bond—Oath.] § 133. Every town or district collector, before he enters upon the duties of his office, and within eight days after he receives notice of the amount of taxes to be collected by him, shall execute a bond, with two or more securities, to be approved by the county board, or supervisor and town clerk of his town, as the case may require, in double the amount of such taxes, conditioned for the faithful execution of his duties as such collector. Signatures to such bond, signed with a

A tax for a corporate purpose is one for the benefit of the inhabitants of the municipality. *C. D. & V. R. R. Co. et al. v. Smith*, 62 Ill. R., 268.

Town officers under the township system making an appropriation to a railroad company in pursuance of law, and upon the vote of the majority of legal voters of the town authorizing the same, are "corporate authorities" of a municipal corporation, who are authorized to levy taxes under the Constitution of 1848. *C. D. & V. R. R. Co. et al. v. Smith*, 62 Ill. R., 268.

The right of corporate or local taxation cannot be delegated by the legislature to any but the corporate authorities. *Gage v. Graham*, 57 Ill. R., 144; *Lee v. Ruggles*, 62 Ill. R., 427; *Chiniquy v. The People*, 78 Ill., 570; *Thatcher v. The People*, 79 Ill., 597.

(1) Where the law requires a collector's warrant to be signed by certain officers, and the warrant bears their signatures, but preceding one of the signatures, the word "countersigned" appears, it is nevertheless a proper signing of the instrument, and forms no objection to it. The law is answered when the signatures of the officers named in the statute appear upon the instrument. *Gurnee v. The City of Chicago*, 40 Ill. R., 165.

mark, shall be witnessed, but in no other case shall witness be required. Said bond shall be substantially in the following form, to-wit:

Know all men by these presents, that we, A. B., of the ——— of ———, in the county of ———, in the State of Illinois, as town (or district) collector, and C. D. and E. F., of the said county and State, as securities, are held and firmly bound unto the People of the State of Illinois, in the penal sum of ———, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, firmly by these presents. Signed and sealed this ——— day of ———, A. D. 19—.

The condition of the foregoing bond is such, that if the above bound A. B. shall perform all the duties required to be performed by him as collector of the taxes for the year 19—, in the town (or district) of ———, in the county of ———, Illinois, in the time and manner prescribed by law, and, when he shall be succeeded in office, shall surrender and deliver over to his successor in office all books, papers and moneys appertaining to his said office, then the foregoing bond to be void; otherwise to remain in full force.

A. B. [SEAL.]
C. D. [SEAL.]
E. F. [SEAL.]

He shall also take and subscribe an oath, to be endorsed on the back of the bond, substantially as follows:¹

I do solemnly swear that I will support the Constitution of the United States, and the Constitution of the State of Illinois, and that I will faithfully discharge the duties of the office of town (or district) collector according to the best of my ability.

[¶ 263, § 257, ¶ 269, § 263.]

140. Bond and oath recorded—Lien of Bond.] § 134. The chairman of the county board (or town supervisor, as the case may require,) shall, within six days thereafter, file such bond, with such approval indorsed thereon, in the office of the recorder,

A collector's warrant confers the same authority, and performs the same office as a *fi. fa.* execution, and when regular and fair on its face, protects the officer and those acquiring rights under it, to the same extent as an execution. *Hill et al. v. Figley*, 25 Ill. R., 156.

All the personal property of the tax payer is bound for the payment of his taxes, from the time the collector receives his warrant until they shall have been paid. The warrant, like an execution, operates as a lien. *Hill et al. v. Figley*, 23 Ill. R., 418. Held, that though a tax was illegally levied, yet the collector, who was simply the ministerial officer of the town, to whom a warrant was directed, regular on its face, and which he was to collect or not at his peril, was not liable for the costs of an injunction restraining the collection of the tax. It seems it would be otherwise if he had actually attempted to collect the tax. *Drake et al. v. Phillips et al.*, 40 Ill. R., 389.

The payment of an assessment is not voluntarily made if the collector has a warrant, by virtue of which he may levy and sell; and the party who has paid the money may recover it of a municipal corporation; although the assessment was illegal, the city having the money for its general uses. *Bradford v. City of Chicago*, 25 Ill. R., 411.

(1) A town collector's term of office begins when he takes the first oath of office within 10 days after his election or appointment. If he fails to take this oath, it is deemed a refusal to serve, and the vacancy may be filled by appointment. *People ex rel. v. Callaghan*, 83 Ill. R., 128.

The county treasurer has no right to administer an oath to a township collector, and when he does, the return and affidavit of the collector thereto cannot be admitted in evidence to prove the facts therein stated. *People, use, etc., v. Yeasel*, 84 Ill. R., 539.

who shall record the same, including the oath, in a separate book to be provided for the purpose, and when recorded shall be filed in the office of the county clerk by the recorder. Said bond, when so filed for record, shall be a lien against the real estate of such town or district collector, until he shall have complied with the conditions thereof.

DELIVERY OF COLLECTOR'S BOOKS—WARRANTS.

- 141. When delivered to collector.
- 142. Collector's warrants.
- 143. Distress for personal tax.
- 144. How to pay over taxes collected.
- 145. County clerk's certificate to county collector.

141. When delivered.] § 135. The respective county clerks shall, on or before the twentieth day after the first day of December, annually, or as soon thereafter as the collectors are duly qualified, deliver to them the books for the collection of taxes; and it shall be the duty of the collectors, within such time, or as soon thereafter as they are qualified, to call at the clerk's office and receive said books. The tax book, provided for collecting all taxes charged against railroad property, and the capital stock of telegraph companies, shall be delivered to the county collector within the same time, annually, or as soon thereafter as he is qualified.¹ [As amended by Act approved June 2, 1881. In force July 1, 1881. Laws 1881, p. 130. See Revenue, ¶ 354, § 52, post.

142. Collector's warrants.] § 136. To each town, or district collector's book a warrant, under the hand of the county clerk and seal of his office, shall be annexed, commanding such town or district collector to collect from the several persons named in said town or district collector's book, the several sums of taxes therein charged opposite their respective names. [See ¶ 138 § 132, ante.

143. Distress for personal tax.] § 137. In all cases the warrant shall authorize the town or district collector, in case any person named in such collector's book shall neglect or refuse to pay his personal property tax, to levy the same by distress and sale of the goods and chattels of such person; and it shall require all payments therein specified to be made by such town or district collector on or before the tenth day of March next ensuing. [As amended by Act approved May 3, 1873.

144. How to pay over taxes collected.] § 138. The warrant shall direct the town or district collector, after deducting the compensation to which he may be legally entitled, to pay over to

(1) Taxes on personal property do not become a lien until the tax books are received by the collector. Opinion Att'y Gen. Edsall, March 13, 1877.

the proper officers the amount of tax collected for the support of highways and bridges, and to the supervisor of the town the moneys which shall have been collected therein, to defray town expenses; to the proper school officers, the district school tax; to the city or incorporated town or village treasurer, or other proper officer, the taxes or special assessments collected by him for such city or incorporated town or village, or others, as often and at such times as may be demanded by the proper officers; and to the county collector, the county tax and the taxes payable to the State treasury collected by him.

145. County clerk's certificate to county collector.] § 139. On the delivery of the tax books to the town or district collectors, the clerk shall make a certified statement setting forth the name of each town or district collector, the amount of taxes to be collected and paid over for each purpose for which the tax is levied in each of the several towns or districts, cities and villages, and furnish the same to the county collector.

COLLECTION DISTRICT AND WHO COLLECTOR IN COUNTIES
NOT UNDER TOWNSHIP ORGANIZATION.

146. County a district—Sheriff collector.

146. County a district—Sheriff collector.] § 140. Each county in this State, not under township organization, shall be a collection district, for the purpose of this Act; and the sheriffs of such counties shall be, respectively, *ex officio*, district collectors of such collection districts. [See Revenue, ¶ 150, § 144, post.

VACANCIES AND RESIGNATIONS.

147. How vacancy filled—Not to exonerate former collector.

148. Duty of appointee.

149. Extension of time in such case.

147. How vacancies filled—Not to exonerate former collector.] § 141. If any town or district collector in this State shall refuse to serve, or shall die, resign or remove out of the county, district or town for which he was elected or appointed, or the office becomes vacated in any other way, before he shall have entered upon or completed the duties of his office, or shall in any way be prevented from completing the same, the county or town board, as the case may require, shall forthwith appoint a collector for the remainder of the year, who shall give the like security and be subject to the like penalties, and have the same power and compensation as the town or district collector in whose place he was appointed, and the county collector shall forthwith be notified of such appointment. Such appointment shall not exonerate the former town collector or his securities

from any liability incurred by him or them. No resignation of a town or district collector shall be accepted, unless sufficient cause is shown, nor shall the person resigning be re-appointed to complete the collections in the same or any other town or district in the county.¹

148. Duty of appointee.] § 142. The town or district collector so appointed shall keep an account of all collections made by the former collector, so far as he can ascertain the same, and when any one shall present a receipt for taxes paid to the former collector, he shall mark against the amount of such taxes to whom and when paid.

149. Extension of time in such case.] § 143. In case of such appointment, the chairman of the county board or the supervisor of the town, may extend the time for the collection of taxes, for a period not exceeding twenty days, of which extension the county collector shall be notified.

COLLECTORS.

- 150. Who collectors.
- 151. Bond—Oath.
- 152. Approved—Recorded—Sent auditor—Lien.
- 153. How otherwise approved.
- 154. Approval of bonds by auditor.
- 155. Discharge of sureties.
- 156. When collector defaults.
- 157. Death of collector.
- 158. Deputy collectors.
- 159. Warrants to deputy collectors.

150. Who collectors.] § 144. The treasurers of counties under township organization, and the sheriffs of counties not under township organization, shall be *ex officio* county collectors of their respective counties.²

151. Bond—Oath.] § 145. Said collector shall, on or before the first day of December, annually, or as soon as he is elected and qualified, and before he enters upon the duties of his office as collector, execute a bond, in addition to his bond as treasurer, in a penal sum of at least double the amount of State taxes to be collected in the year next thereafter, with two or more securities, who shall be residents of the said county, and owners of real estate located within this State equal in value to the amount specified in the bond; which amount shall be determined, and which bond shall be approved, by the county board. Each name shall be recited, in full, in the body of the bond. The signatures to such bond, signed by a mark, shall be witnessed,

(1) See post, "Elections," ¶ 131, § 126, note. *People ex rel. v. Callaghan*, 83 Ill. R. 128; *Ross v. The People ex rel.*, 78 Ill., 375.

(2) *Kilgore v. People*, 76 Ill., 548; *Broadwell, et al. v. People*, 76 Ill., 560.

but in no other case shall witness be required. Such bond shall be substantially in the following form, to-wit:

Know all men by these presents, that we, A. B., collector, and C. D. and E. F., securities, all of the county of ———, and State of Illinois, are held and firmly bound unto the People of the State of Illinois, in the penal sum of ——— dollars, for the payment of which, well and truly to be made, we bind ourselves, each of us, our heirs, executors and administrators, firmly by these presents.

Signed and sealed, this ——— day of ———, 19—.

The condition of the foregoing bond is such that if the above bound A. B. shall perform all the duties required to be performed by him as collector of the taxes for the year 19—, in the county of ———, in the State of Illinois, in the time and manner prescribed by law, and when he shall be succeeded in office, shall surrender and deliver over to his successor in office all books, papers and moneys appertaining to his said office, then the foregoing bond to be void, otherwise to remain in full force.

A. B. [SEAL.]

C. D. [SEAL.]

E. F. [SEAL.]

He shall also take and subscribe an oath, to be indorsed on the back of the bond, substantially as follows:¹

I do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Illinois, and that I will faithfully discharge the duties of the office of county collector according to the best of my ability.

[¶ 263, § 257, ¶ 269, § 263, ¶ 291, § 285.

152. Approved—Recorded—Sent auditor—Lien.] § 146. The collector's bond shall be approved by the county board, and shall be recorded on the records of said board, and forthwith mailed to the auditor by the county clerk. Said clerk shall attach his certificate to said bond, under the seal of his office, showing that it has been duly approved and recorded. Said bond, when approved and recorded, shall be a lien against the real estate of such collector until he shall have complied with the conditions thereof.

153. How otherwise approved.] § 147. The chairman of the county board, the county judge and the county clerk shall have power and authority to approve the bond of the county collector in like manner as the county board has to approve said collector's bond; and said bond, when so approved, shall be subject to the several provisions of this Act, the same as if approved by said board.

(1) A collector of taxes, although he may not have taken an oath of office in the manner prescribed by the statute, may be an officer de facto, so far as the public and third persons are concerned, while he retains the office, and exercises the duties of it. *Guyer v. Andrews*, 11 Ill. R., 494; *Kilgore v. Ferguson, et al.*, 77 Ill., 213; *Coons, et al. v. The People*, 76 Ill., 383.

154. Approval of bonds by auditor.] § 148. The collector's bond, when received by the Auditor, and if found to be made in conformity to law, and the securities satisfactory, shall be filed in his office and the fact thereof certified to the county clerk. If the auditor finds said bond to be not in accordance with law, or if he has reason to doubt the sufficiency of the surety, he shall return the bond to the county clerk, who shall notify the collector to make a sufficient bond. If a new bond is required, it shall be approved and recorded and subject to the requirements of this section, the same as the first bond given by the collector. No tax books or lists shall be placed in the hands of the county collector until the auditor's certificate, under the seal of his office, has been received by the county clerk, showing that the collector's bond has been received and filed in the auditor's office. Nothing in this section shall be construed as relieving the securities of a collector from liabilities incurred under a bond not approved and filed by the auditor.

155. Discharge of sureties.] § 149. The securities on any bond given in pursuance of this Act, or either of them, may, at any time after the execution of said bond, if they, or either of them, have good reason to believe that the officer in said bond is about to fail to comply with the conditions thereof, file with the county clerk a notice in writing, verified under oath, by the person asking to be discharged, setting forth the facts in the case, and asking to be released from any further liability on said bond; whereupon the clerk with whom such notice shall be filed, shall notify the said officer to give additional security, equal to the security about to be released by the county board, which notice may be served by the said clerk, or by any person appointed by said board or clerk. If the officer so notified shall not appear and give additional security within two days after notification, the county board may remove him from office; and in all such cases said board shall appoint some person to fill the vacancy occasioned by such removal, who shall execute bond, qualify and perform the duties required as such officer. [See Revised Statute, Chap. 103, § 10.]

156. When collector defaults.] § 150. If the securities on any collector's bond, or either of them, shall be satisfied that such collector is making improper use of the funds collected by him, or has absconded, or is about to abscond, from this State, whereby said securities may become liable to pay any sum or sums of money, it shall be lawful for said security to sue out a writ of attachment against the goods and chattels of such collector in like manner as he would be authorized to do if said collector was personally indebted to such security; and the

money collected on any such attachment shall be paid into the State, county, town or city treasury, by the officer collecting the same, in like manner as if paid over by the collector.

157. Death of collector.] § 151. In case of the death of any county collector during the time the tax books are in his hands, and before the time specified in this Act for making settlements, the county clerk shall demand and take charge of the tax books. Said clerk shall appoint one or more competent persons to examine said tax books; and it shall be the duty of the persons so appointed to ascertain the amount remaining uncollected, and make out a correct abstract of the same: *Provided*, that should there be but a small portion of the taxes collected at the time of the death of the collector, then the amount actually collected shall be ascertained, and the same books used in completing the collections.

158. Deputy collectors.] § 152. Collectors may appoint deputies by an instrument in writing, duly signed, and may also revoke any such appointment at their pleasure; and may require bonds or other securities from such deputies, to secure themselves. And each such deputy shall have like authority, in every respect, to collect the taxes levied or assessed within the portion of the county, town, district, village or city assigned to him, which by this Act is vested in the collector himself; but each collector shall, in every respect, be responsible to the State, county, towns, villages, cities, districts and individuals, companies or corporations, as the case may be, for all moneys collected, and for every act done by any of his deputies, whilst acting as such, and for any omission of duty of such deputy. Any bond or security taken from a deputy by a collector, pursuant to this Act, shall be available to such collector, his representatives and securities, to indemnify them for any loss or damage accruing from any act of such deputy.

159. Warrants to deputy collectors.] § 153. The county clerk, on being requested by any collector, shall attach a warrant, under his hand and the seal of his office, to any list furnished by such collector to his deputy, which warrant shall be in the same manner and form as is required in the original collector's list or book, except that the amount collected by such deputy shall be paid to the collector, who shall pay the same over to the proper officer or persons.

MANNER IN WHICH TAXES ARE TO BE COLLECTED. (1)

- 160. Kind of money receivable.
- 161. How collection made.
- 162. Distress for taxes.
- 163. Sale of property distrained—Surplus.
- 164. Removal within county.
- 165. Fees on distraint.
- 166. Removal from county.
- 167. Collection after return of county collector.
- 168. Payment on part of tracts—undivided interest.
- 169. Entry of payment—Form of receipt—Evidence—Name, etc.

160. Kind of money.] § 154. The county revenue shall be collected in gold and silver coin, United States legal tender notes, current national bank notes, county orders and jury certificates, and in no other currency. The revenue for State purposes shall be collected in gold and silver coin, United States legal tender notes, current national bank notes, and auditor's warrants, and in no other currency. The revenue for city purposes shall be collected in gold and silver coin, United States legal tender notes, current national bank notes, city comptrollers', city auditors', or city clerks' warrants or orders on the city treasurer, and in no other currency. State taxes levied for any special purpose other than to defray the ordinary expenses of the State Government, shall be collected in gold and silver coin, United States legal tender notes, current national bank notes and in no other currency. All other taxes shall be collected in gold and silver coin, United States legal tender notes and in current national bank notes and in no other currency unless otherwise specially provided for.² [As amended by Act approved May 25, 1877. In force July 1, 1877. Laws 1877, p. 171.]

161. How collection made.] § 155. Every town collector, upon receiving the tax book or books, shall proceed to collect

(1) A court of equity will never entertain a bill to restrain the collection of a tax, except in cases where the tax is unauthorized by law, or assessed on property not subject to taxation, or where the property has fraudulently been assessed too high. *C. B. & Q. R. R. Co. v. Cole, et al.*, 75 Ill. R., 592.

The courts cannot interfere to prevent the collection of taxes, unless they are void, or levied without power on the part of the officers executing the revenue law; but when the officers, acting under the law, transcend their powers and act without warrant of law, the courts may give relief. *Ottawa Glass Co. v. McCaleb, etc.*, 81 Ill. R., 537.

(2) The mandate of the State to its officers, as to the kind of funds in which the revenue shall be collected, cannot be disobeyed. Congress has no power over the subject. *State Treasurer v. Collector of Sangamon Co.*, 28 Ill. R., 512.

Any registered bond tax collected under levy made by the State Auditor pursuant to law is declared to be a State tax by the statute and must therefore be collected in "gold and silver coin, United States legal tender notes, current national bank notes, or Auditor's warrants, and in no other currency." *Opinion Auditor Needles*, March 23, 1878.

Money, whether in the State treasury, or in the hands of the collector, is alike the property of the State. *The People v. Miner*, 46 Ill. R., 385.

By the new Constitution, all taxes levied for State purposes, are required to be paid into the State treasury. Art. 9, §7.

the taxes therein mentioned, and for that purpose shall call at least once on the person taxed, or at his place of residence or business, if in the town of such collector, and shall demand payment of the taxes charged to him on his property: *Provided*, that in counties not under township organization, it shall be the duty of the collector to give notice, in a newspaper published in the county, if any such newspaper there be, stating when and where he will be prepared to receive such taxes, which said notice shall be published at the first publication of such newspaper after the delivery to such collector of the tax book or tax books, and immediately upon receipt of such tax book or tax books the said collector shall cause to be posted in three of the most public places in each precinct of his county, a like notice and the publication of said notices in said newspaper and the posting thereof as provided herein, shall be deemed a sufficient demand for said taxes.² [As amended by Act approved June 2, 1911. In force July 1, 1911. Laws 1911, p. 485.]

162. Distress for taxes.] § 156. In case any person, company or corporation shall refuse or neglect to pay the taxes imposed on him or them, when demanded, it shall be the duty of the collector to levy the same, together with the costs and charges that may accrue, by distress and sale of the personal property of

(2) A mortgagor or mortgagee in possession is bound to pay the taxes on the mortgaged premises, the latter will be allowed therefor on foreclosure of the mortgage. *Wright et al. v. Langley*, 36 Ill. R., 381; *Moore v. Titman*, 44 Ill. R., 367.

A party in actual possession of lands under a contract, listed in his name, is personally liable for the taxes. *Glancey v. Elliott*, 14 Ill. R., 458.

An assignee is bound, while the assets remain in his hands for administration, to pay the taxes assessed thereon. *Ryan v. Gallatin County*, 14 Ill. R., 82.

A person having a life estate in lands is bound to pay the taxes thereon during the existence of the estate, unless exempt by the instrument creating the estate. *Higgins v. Crosby*, 40 Ill. R., 263; *Waldo, et al. v. Cummings et al.*, 45 Ill. R., 421.

The assignee of a lease for the title of another, is bound to pay all the taxes on the premises during his tenancy. *Prettyman v. Watson*, 34 Ill. R., 192.

Co-tenants are equally bound to keep the taxes paid, and one who pays all taxes can recover of the other for the amount with interest. *Morgan et al. v. Herrick, administrator, etc., et al.*, 21 Ill. R., 481; *Chickering et al. v. Failes*, 38 Ill. R., 342.

If the taxes are paid by a tenant, it will enure to the benefit of the landlord. If by a trustee, or cestui que trust, to the benefit of the combined legal and equitable title claimed. *Colfield v. Furry*, 19 Ill. R., 183.

An administrator is not bound by law to pay taxes on the real estate left by the decedent. *Stone et al. v. Wood*, 16 Ill. R., 177.

Upon the question on whose account and for whom payment of taxes has been made, the tax receipts therefor are not conclusive evidence. Like other receipts, they are susceptible of explanation. *Rand v. Scofield*, 43 Ill. R., 168; see case of *Hichman v. Whetstone*, 23 Ill. R., 188.

Ordinarily, a party of whom a tax is illegally collected, has an ample remedy at law by an action of trespass against the officer collecting it, or by an action of assumpsit to recover back the money paid. *Cook County v. C. B. & Q. R. R. Co.*, 35 Ill. R., 467.

A tax is not an ordinary debt; it takes precedence of all other demands, and is a charge upon the property, without reference to the matter of ownership. *Dunlop v. County of Gallatin*, 15 Ill. R., 9.

A tax has been held to be recoverable by action like a debt. *Ryan v. Gallatin County*, 14 Ill. R., 78; *Creps v. Baird*, 30 Ohio R., 277.

the person, company or corporation who ought to pay the same. [Confined to personal property by § 137.¹

163. Sale of property distrained—Surplus.] § 157. The collector shall give public notice of the time and place of sale, and of the property to be sold, with the name of the delinquent, at least five days previous to the day of sale, by advertisements, to be posted up in at least three public places in the town or district where such sale is to be made. Such sale shall be by public auction, and, if practicable, no more property shall be sold than sufficient to pay the tax, costs and charges due. If the property distrained shall be sold for more than the amount of the taxes and charges due, the surplus shall be returned to the person in whose possession such property was when the distress was made, if no claim be made to such surplus by any other person. If any other person shall claim such surplus, on the ground that the property sold belonged to him, and such claim be admitted by the person for whose tax the same was distrained, the surplus shall be paid to such owner.

(1) The remedy by distress for the collection of taxes is not necessarily exclusive. The same remedy may be pursued as for the collection of debts. *Ryan v. Gallatin County*, 14 Ill. R., 83. A note in the hands of an attorney for collection, the property of a delinquent tax payer, may be reached for the payment of the tax, by proceeding as in case of a debt. *Opinion Auditor Miner*, Feb. 13, 1868.

A tax creates a lien, and takes precedence of judgments and all other claims, and no property is free from levy and sale for the payment thereof. *Dennis v. Maynard et al.*, 15 Ill. R., 481; *Dunlap v. Gallatin County*, 15 Ill. R., 9.

Household goods are not exempt from taxation nor from being distrained and sold for taxes. *Opinion Auditor Miner*, April 18, 1867; *Dennis v. Maynard et al.*, 15 Ill. R., 481.

Insurance companies are required to pay the tax assessed on them, and collections are to be made by distraint and sale of personal property in the same manner as that of other corporations or individuals. *Opinion Auditor Lippincott*, Feb. 21, 1870; Jan. 28, 1870.

The tax on personal property cannot be carried forward from one year to another. If the tax is not paid the property must be distrained and sold unless the tax payer becomes insolvent or has absconded and no property can be found. If the tax on personal property liable to tax for former years was omitted to be assessed, it should be assessed for the current year as well as for the years for which it was liable but omitted to be assessed. *Opinion Auditor Lippincott*, Nov. 26, 1869.

Auditor Needles has decided that, under the law as at present existing, collectors have no authority to seize and sell personal property for tax on real estate. *Opinion of Auditor*, Dec. 31, 1877.

Where irregularities occur in the listing of property, but which do not have the effect to render the tax wholly void, the collector, who has distrained for taxes unpaid, will not be liable to an action for such irregularity, which is not his fault. *Exchange Bank Columbus v. Hine*, 3 Ohio St. R., 1.

A township collector has the right to go out of his town and to any place within his county to collect any tax, whether real or personal, assessed in his district. See § 73, § 68. *Opinion Auditor Lippincott*, Jan. 7, 1870.

If the collector shall make a return that he could not find goods and chattels whereon to levy and collect the amount assessed, that will be conclusive of the fact stated. If the return is false, the officer is responsible. *City of Ottawa v. Maey et al.*, 20 Ill. R., 413.

The collector, in collecting the tax charged upon his list, acts as a ministerial officer, and is protected by his warrant the same as any other ministerial officer would be in executing process. The rule in such case is, that if a ministerial officer executes process, upon the face of which it appears that the court issuing it had not jurisdiction of the subject matter or of the person of the defendant, the process will afford him no protection for acts done under it. But if the subject matter of the

164. **Removal within county.]** § 158. In case any person against whom a tax shall be assessed, under the provisions of this Act, shall have removed from one town or district to another town or district in the same county without paying such tax, it shall be lawful for the collector having the tax books in which such tax is charged, to levy and collect such tax of the goods and chattels of the person assessed, in any town or district within said county to which such person shall have removed, or from property of such person wherever the same may be found in said county.

165. **Fees on distraint.]** § 159. In levying on and selling personal property for taxes, the collector shall be governed by the same rules and be entitled to the same fees as constables are or may be for like services on executions; but in no case shall any collector charge mileage, unless he is compelled to distrain property. [See Revised Stat., Chap. 79, § 88, 89; Revised Stat. Chap. 53, § 41, 42.]

166. **Removal from county.]** § 160. In case any person against whom taxes have been levied under the revenue laws of this State, in any county, town, city or district of this State, shall have removed from such county, town, city or district, after such assessment has been made, and before the collection of the same, the county clerk, when directed by the county board, shall issue a warrant under his hand and seal of office, directed to any sheriff, coroner or constable of the county, town, city or district to which such person may have removed, commanding such officer to whom the warrant may be directed to make the amount of such tax, together with the costs and charges that may accrue, from the personal property of the person owing such tax—distrain and sale of property under this section to be in the same manner

suit is within the jurisdiction of the court, but there is want of jurisdiction of the person, the officer executing the process is not liable, unless the want of jurisdiction appears by the process. Therefore, where a county clerk places property, which is the subject of taxation, upon the tax list within the proper time and assesses the same with a tax, in pursuance of the statute prescribing his duties in this respect, but without notice to the party interested, the collector is not a trespasser in the collection of such tax, by reason of such want of notice, unless it is disclosed by the tax list and warrant, or otherwise personally known to the treasurer. *Champaign Co. Bank v. Smith*, 7 Ohio St. R., 42.

Where irregularities occur in the listing of property, but which do not have the effect to render the tax wholly void, the treasurer, who has distrained for taxes unpaid, will not be liable to an action for such irregularity, which is not his fault. *Exchange Bank Columbus v. Hines*, 2 Ohio St. R., 1.

When it becomes necessary for the collector to levy upon and sell the goods and chattels of any person for the collection of taxes, it will be lawful for him to sell the same at any time before the time he is required to pay over the money to the county treasurer, and other officers mentioned in his warrant, having made a levy within the proper time. *Sheldon v. Van Buskirk*, 2 Comstock R., 473. See post, ¶ 175, § 169.

A court of equity will enjoin the sale of the property of one man levied on by the collector of taxes, for the taxes of another person. *Deming et al. v. James*, 72 Ill. R., 79.

as provided in this Act for other cases of distraint and sale of personal property. The taxes which may be collected under this section shall be disposed of in the manner required by this Act with respect to taxes collected in any other manner. All other parts of this Act providing for cases of failure of officers to pay over taxes, shall apply to all officers, collecting taxes under this section, who fail to pay over and correctly account at the proper time and manner for the taxes collected by them.

167. Collection after return of county collector.] § 161. The power and duty to levy and collect any tax due and unpaid, shall continue in and devolve upon the county collector and his successors in office, after his return and final settlement until the tax is paid; and the warrant attached to the collector's book, shall continue in force and confer authority upon the collector to whom the same was issued and upon his successors in office, to collect any tax due and uncollected thereon, although such books may have been returned, or the tax carried forward into any other book. This section shall apply to all collectors' books and tax warrants heretofore issued, upon which taxes may be due and unpaid, as well as those hereafter issued. [As amended by Act approved May 29, 1879. In force July 1, 1879. Laws 1879, p. 246.]

168. Payment on part of tract—Undivided Interest.] § 162. The collector shall receive taxes on part of any lot, piece or parcel of land charged with taxes, when a particular specification of the part is furnished. If the tax on the remainder of such lot or parcel of land shall remain unpaid, the collector shall enter such specification in his return, so that the part on which the tax remains unpaid may be clearly known. The tax may be paid on an undivided share of real estate. In such case the collector shall designate on his record upon whose undivided share the tax has been paid.

169. Entry of payment—Receipts—Evidence—Name, etc., of owner.] § 163. Whenever any person shall pay the taxes charged on any property, the collector shall enter such payment in his book, and give a receipt therefor, specifying for whom paid, the amount paid, what year paid for, and the property and value thereof on which the same was paid, according to its description in the collector's book, in whole or in part of such description, as the case may be; and such entry and receipt shall bear the genuine signature of the collector or his deputy receiving such payment; and whenever it shall appear that any receipt for the payment of taxes shall be lost or destroyed, the entry so made may be read in evidence in lieu thereof. The col-

lector shall enter the name of the owner, or the person paying tax, opposite each tract or lot of land, when he collects the tax thereon, and the post office address of the person paying such tax. [As amended by Act approved June 2, 1881. In force July 1, 1881. Laws 1881, p. 136.]

SWORN STATEMENTS OF COLLECTIONS TO BE MADE—
PAYMENTS.

- 170. Thirty-day settlements with cities, etc.
- 171. Thirty-day settlements with county collector.
- 172. Local taxes to be paid over, etc.
- 173. Final settlement for local taxes before return.
- 174. Duplicate receipts.

170. Thirty day settlements with cities, etc.] § 164. Town and district collectors shall, every thirty days, when required to so do by the proper authorities of incorporated towns, cities and villages, road and school districts, for which any tax is collected, render to said authorities a statement of the amount of each kind of tax collected for the same, and at the same time pay over to such authorities the amount so shown to be collected.¹ [As amended by Act approved May 3, 1873.¹]

171. Thirty days settlements with county collector.] § 165. Such town and district collectors shall, every thirty days, render a similar account of the taxes payable to the State treasury, and of the county taxes, to the county collector, and at the same time pay over the amount of such taxes to said county collector.

172. Local taxes to be paid over, etc.] § 166. Said town and district collectors shall pay over the town, road, school and other local taxes, as may be directed in the warrant attached to the collector's book.

173. Final settlement for local taxes before return.] § 167. Each town and district collector shall make final settlement for the township, district, city, village and town taxes, charged in the tax books, at or before the time fixed in this Act for paying over and making final settlement for State and county taxes collected by them. In such settlements, said collectors shall be entitled to credit for the amount of their commissions on the amount collected, and for the amount uncollected on the tax books, as may be determined by the settlement with the county collector.

(1) Where a collector pays school moneys belonging to a school district to any person other than the treasurer of the proper township, he will be guilty of a breach of his bond, and liable to nominal damages, although the person receiving the money, upon discovery of the mistake, pays over the same to the proper school district officers, so that such district, in fact loses nothing. *People, use, etc. v. Yeasel*, 84 Ill. R., 539.

174. **Duplicate receipts.]** § 168. The officer to whom any such moneys may be paid, under the preceding sections, shall deliver to the collector duplicate receipts therefor.

RETURN OF TOWN AND DISTRICT COLLECTORS TO THE
COUNTY COLLECTOR.

- 175. When return made.
- 176. Form of return as to personal tax.
- 177. Credits, etc.
- 178. Form of return as to real estate.
- 179. To note what personal tax can be collected from real estate.
- 180. Suit on bond.
- 181. Satisfaction piece.
- 182. Satisfaction piece may be recorded—Effect.
- 183. Delinquent defined.

175. **When return made.]** § 169. Town and district collectors shall return the tax books, and make final settlement for the amount of taxes placed in their hands for collection, on or before the tenth day of March next after receiving the tax books: *Provided*, that the county collector may first notify, in writing, the several towns or district collectors upon what day, within twenty days after the tenth day of March, they shall appear at his office to make final settlement, and at the time of making return to the county collector, each town or district collector in counties under township organization, shall make out and deliver to the county collector a detailed statement, in writing of the amount of taxes he has been unable to collect on real estate and from persons charged with personal property taxes, which statement shall show each kind of tax, the same as in the tax book delivered to him by the county clerk, and shall show the number of the page of the tax book and the number of the line of the page on which the item appears to be delinquent, and in case where no taxes have been paid on any one page on the collector's book, the page footings of the taxes on such page may be copied into such statement. It shall not be necessary to give in the statement the description of the real property delinquent, nor the names of the owners thereof, nor the names of the persons delinquent for personal property taxes. The town or district collector shall add up the delinquent taxes in said statement and make a summary thereof, setting forth the aggregate amount of each kind of tax and the total delinquent, in the same manner as in his warrant, and shall make oath that said statement is true and correct. [As amended by Act approved and in force May 31, 1881. Laws 1881, p. 131.]

176. **Form of return as to personal tax.]** § 170. If any town or district collector shall be unable to collect any tax on personal property, charged in the tax book, by reason of the

removal or insolvency of the person to whom said tax is charged, or on account of any error in the tax book, he shall, at the time of returning his book to the county collector, note, in writing, opposite the name of each person charged with such tax, the cause of failure to collect the same, and shall make oath that the cause of delinquency or error noted is true and correct, and that such sums remain due and unpaid, and that he has used due diligence to collect the same, which affidavit shall be entered upon said collector's book, and be signed by the town or district collector.¹ [As amended by Act approved May 29, 1879. In force July 1, 1879. Laws 1879, p. 247.]

177. Credits, etc.] § 171. Upon the filing of said book, the county collector shall allow the town or district collector credit for the amount of taxes therein stated to be unpaid, and shall credit the same to the several funds for which said tax was charged. When the county collector makes settlement with the county board, such statements shall be sufficient voucher to entitle him to credit for the amount therein stated, less such amount thereof, if any, that may have been collected by him. In no case shall any town or district collector, or county collector, be entitled to abatements for personal property tax until the statement and affidavit are filed. [As amended by Act approved May 29, 1879. In force July 1, 1879. Laws 1879, p. 247.]

178. Form of return as to real estate.] § 172. Each town or district collector, at the time of returning his tax book to the county collector, shall make affidavit, to be entered upon such book and subscribed by the collector, that the taxes charged against each tract or lot, or assessment of personal property re-

(1) The affidavit of the town collector as to delinquent personal property, where the list shows the cause of inability to collect to have been insolvency or removal, is final when there is no real estate. Opinion Auditor Miner, Jan. 20, 1868; City of Ottawa v. Macy, 20 Ill. R., 423.

Town collectors can make no corrections or deductions from valuations made by the assessor on real or personal property. Inability to collect on account of removals or insolvency of the tax payer are the only causes entitling the collector to a credit for the amount of such tax on personal property, in his settlement with the county collector. Opinion Auditor Lippincott, Feb. 7, 1870.

Assessment of personal property creates no lien on the property; a lien is created by the delivery of the collector's books. Hill et al. v. Figley, 23 Ill. R., 418. It is not thought that a collector can levy on the goods owned jointly or as a company for the tax of individuals. The tax is a debt due from the person assessed, and is not discharged by the collector's return, delinquent. The board of supervisors have authority to cause prosecution for collection. The cause of inability to collect personal property tax must be shown in each case, and if the affidavit thereto is made according to law, the county treasurer has no discretion, but must allow the credit. City of Ottawa v. Macy, 20 Ill. R., 413. The collector should be allowed time to complete any proceedings commenced under his warrant, before the time of its expiration. Opinion Auditor Lippincott, Feb. 17, 1869; Opinion Auditor Miner, May 11, 1868.

It is not essential to the jurisdiction of the court to render judgment for taxes against delinquent lands, that the town collector should make and return to the county collector an affidavit, showing what taxes are delinquent; the delinquent list reported by the county collector to the county clerk, is prima facie evidence of delinquency upon which, unless overcome by other evidence the court may render judgment. Fisher v. The People, 84 Ill. R., 491.

main due and unpaid at the date of making such affidavit in each case where there does not appear in the proper column the amount of such taxes as having been paid to such collector, and the date of payment and the name of any person as having paid the same; which affidavit shall be *prima facie* evidence of the facts therein stated. [As amended by Act approved May 29, 1879. In force July 1, 1879. Laws 1879, p. 247.]

179. To note what personal tax can be collected from real estate.] § 173. Each town or district collector shall particularly note, in his returns to the county collector, all cases of personal property tax that he was unable to collect, which can be made from real estate of the person owing such tax.

180. Suit on bond.] § 174. If the town or district collector shall fail to appear and make final settlement, or pay over the amount in his hands, when required in this Act, the county collector shall forthwith cause the bond of such collector to be put in suit, and recovery may be had thereon for the sum due, for all taxes and special assessments, and twenty-five per cent. thereon as damages, with costs of suit.

181. Satisfaction piece.] § 175. Upon the final settlement of the amount of taxes directed to be collected by any collector, in any of the towns or districts in this State, the county collector shall, if requested, give to such collector, or any of his securities, a satisfaction piece in writing.

182. Satisfaction piece may be recorded—Effect.] § 176. Such satisfaction piece may be recorded in the recorder's office, and when so recorded shall operate as a discharge of the securities and the lien upon the property of the collector, except as to all suits commenced upon such bond within three years after the recording of the same.

183. Delinquent defined.] § 177. All real estate upon which taxes remain due and unpaid on the tenth day of March, annually, or at the time the town or district collector makes return of his books to the county collector, shall be deemed delinquent; and all such due and unpaid taxes shall bear interest after the first day of May at the rate of one per cent. per month until paid or forfeited; parts or fractions of a month shall be reckoned as a month, and all such collections on account of interest shall be paid into the county treasury to be used for county purposes. [As amended by Act approved May 29, 1879. In force July 1, 1879. Laws 1879, p. 253.]

RETURN OF DELINQUENT SPECIAL ASSESSMENT.

184. To county collector—His duties—Transfer of amounts.

185. Demand for assessment when tax paid.

184. To county collectors—His Duties — Transfer of amounts.] § 178. When any special assessment made by any city, town or village, pursuant to its charter, or by any corporate authorities, commissioners or persons, pursuant to law, remain unpaid in whole or in part, return thereof shall be made to the county collector on or before the tenth day of March next after the same shall have become payable, in like forms as returns are made for delinquent land tax. County collectors shall collect, account for, and pay over the same to the authorities or persons having authority to receive the same, in like manner as they are required to collect, account for and pay over taxes. The county collector may, upon return of delinquent special assessments to him, transfer the amounts thereof from such returns to the tax books in his hands, setting down therein, opposite the respective tracts, or lots, in proper columns to be prepared for that purpose, the amounts assessed against such tract or lot.¹ [As amended by Act approved May 3, 1873. See Revenue, ¶ 285, § 279; ¶ 305, § 5; ¶ 309, § 9, post.

185. Demand for assessment when tax paid.] § 179. When any special assessment is returned against property, the taxes upon which shall have been paid to the town or district collector, it shall be the duty of the county collector to cause demand to be made for the payment of such special assessment, or a notice thereof to be sent by mail, or otherwise, to the owner, if his place of residence is known. The certificate of a collector that such demand was made, or notice given, shall be evidence thereof.

COUNTY COLLECTOR'S RECEIPTS—POWERS.

186. Form of receipt.

187. Powers to collect.

186. Form of receipt.] § 180. On the application of any person to pay any tax or special assessment upon any real property, it shall be the duty of the county collector to make out to such person a receipt, in which shall be noted all taxes and assessments upon such property returned to such collector, and not previously paid. [As amended by Act approved June 2, 1881 Laws 1881, p. 136.

187. Powers to collect.] § 181. County collectors shall have the same powers, and may proceed in the same manner, for

(1) The People ex rel. Miller v. Breslin, 80 Ill., 423; Lehmer v. The People ex rel. Miller, 80 Ill., 601.

the collection of any tax on real or personal property, as town or district collectors; and if in any town or collection district the office of town or district collector is or shall become vacant, and such vacancy shall not be filed on or before the tenth day of March next following such vacancy, or if in any town or collection district the books for the collection of taxes, for any reason, have not been, or shall not be, delivered to the town or district collector, on or before the tenth day of March in any year, the county clerk shall deliver all such collector's books to the county collector of such county having annexed to each of such books a warrant under the hand and official seal of the county clerk, commanding such county collector to collect from the several persons named in such books, the several sums of taxes therein charged opposite their respective names, and authorizing him in case any person named in such collector's books shall neglect or refuse to pay his personal property tax, to collect the same by distress, and sale of the goods and chattels of such person. It shall thereupon be the duty of such county collector to collect and pay over all taxes, assessments, and other charges shown in such books and to do all acts, required of him by law, in like manner as if such taxes, assessments, and other charges, had been duly returned delinquent by a town or district collector. The collector's books so delivered to the county collector, by the county clerk, shall, for all purposes, in all subsequent proceedings, be used in the same manner, and have the same force and effect as if said books were delivered to the town or district collectors, and duly returned by them, as provided by law. When any injunction restraining the collection of taxes shall be dissolved after the tax books shall have been returned to the county collector, such taxes or the portion thereof, upon which such injunction shall have been dissolved, shall be paid to the county collector, who shall have the same power and shall proceed in the same manner for the collection of such taxes, as though the same or such portion thereof had never been enjoined. [As amended by Act approved May 29, 1879. In force July 1, 1879. Laws 1879, p. 248.]

ADVERTISEMENT FOR JUDGMENT AND SALE.

188. Advertisement.
189. Proceedings against real estate for personal tax.
190. Figures, etc., used—Advertisement, etc.
191. When application for judgment made, etc.
192. Copies of papers containing advertisement.
193. Error in advertisement.
194. When delinquent list filed—Form of.
195. Tax may be paid before sale.
196. Payments reported—List corrected.

188. **Advertisement.]** § 182. At any time after the first day of April next after such delinquent taxes and special assessments on lands and lots shall become due, the collector shall publish an advertisement, giving notice of the intended application for judgment for sale of such delinquent lands and lots, in a newspaper published in his county, if any such there be, and if there be no such paper printed in his county, then in the nearest newspaper in this state to the county seat of such county. Said advertisement shall be once published at least three weeks previous to the term of the county court at which judgment is prayed, and shall contain a list of the delinquent lands and lots upon which the taxes or special assessments remain due and unpaid, the names of owners if known, the total amount due thereon, and the year or years for which the same are due. Said collector shall give notice that he will apply to the county court, at the term thereof, for judgment against said lands and lots for said taxes, special assessments, interest and costs, and for an order to sell said lands and lots for the satisfaction thereof; and shall also give notice that, on the Monday next succeeding the day fixed by law for the commencement of such term of the said county court, all the lands and lots for the sale of which an order shall be made, will be exposed to public sale at the building where the county court is held in said county, for the amount of taxes, special assessments, interest and cost due thereon; and the advertisement published according to the provisions of this section shall be deemed to be sufficient notice of the intended application for judgment and of the sale of lands and lots under the order of said court. Where the publisher of any paper that may have been selected by the collector shall be unable or unwilling to publish such advertisement, the collector shall select some other newspaper, having due regard to the circulation of such paper.¹ [As amended by Act approved May 3, 1873. See § 185, § 187.]

(1) The delinquent tax list is not required by law to be published in the paper having the largest circulation in the county, or out of it. Opinion Auditor Miner, March 11, 1868.

The publication must be made precisely as directed by law. *Scammon v. City of Chicago*, 40 Ill. R., 146.

Application for judgment against delinquent lands, and for an order of sale, may be made to the county court at the June term. The collector is not compelled to make it at the May term. *The People ex rel. v. Nichols*, 49 Ill. R., 517.

A notice which omits to state that an order for sale will be applied for when the application for judgment is made, is insufficient and subsequent proceedings are void. *Charles v. Waugh*, 35 Ill. R., 315.

The statute form of advertisement must be strictly followed. The omission of the title of the collector after his name signed thereto, was held to be fatal. *Spear v. Ditty*, 7 Vt. R., 282. Where the notice was for "repairing and building bridges," and the tax authorized was for making and repairing roads and building bridges, it was held insufficient. *Charles v. Waugh*, 35 Ill. R., 315.

It is not necessary to specify in detail the several classes of tax in the adver-

189. **Proceedings against real estate for personal tax.] § 183.** When it becomes necessary to charge the tax on personal property against real property, the county collector shall select for that purpose some particular tract or lots of real property owned by the person owing such personal property tax; and in his advertisement for judgment and sale, shall designate the particular tract or lots of real property against which such personal property tax is charged, and in the list filed for judgment, the same facts shall be shown, and the court shall take cognizance thereof, and give judgment against such tract or lots of real property, for such personal property tax.¹ [See ¶ 261, § 255.]

190. **Figures, etc., used—Advertisement, etc.] § 184.** In all advertisements for the sale of lands and lots for taxes or special assessments, and in entries required to be made by the

tisements of delinquent lands; this, however, does not apply to the list to be filed with the clerk, or the record for judgment, but to the advertisement only. Opinion Auditor Miner, March 2, 1867.

To give the court jurisdiction it is not necessary that the collector's notice should specify the first day of the term of the court to which application is made, and by authority of ¶ 27, § 26 of this act, a discretion is given to the collector to select the term of court at which he will make application for judgment. *Parks et al. v. Miller, Treasurer, etc.*, 48 Ill. R., 360.

The law contemplates a pertinent description of the land in the advertisement of sale. It should be so described that the owner may know that the tax on his land is unpaid, and that purchasers may know the precise land intended. A description as 485 acres of a certain tract named, without location, is insufficient. A description as 150 acres, part of section 36, northwest corner, is too indefinite and defective. A description as 60 acres, part of the north half of section 13, is too vague and uncertain. A description as 2-3 of block 4, in etc., is void for uncertainty. A description as lot 11, block 20, Roberts & Randall's addition, with no other description, except that the notice was headed "Auditor's Office, Ramsay County, Minn., St. Paul, December 8, 1862," is insufficient. A sale by such descriptions would confer no title. *Douglas v. Dangerfield*, 10 Ohio R., 152; *Stewart v. Aten*, 5 Ohio R., 257; *Lafferty v. Byers*, 5 Ohio R., 558; 2 Id., 287; 3 Id., 272; *Treon v. Emerick*, 6 Ohio R., 391; *Burchard v. Hubbard*, 11 Ohio R., 316; *Bidwell v. Coleman*, 11 Minn. R., 78; *Bidwell v. Webb*, 10 Minn. R., 59.

The county collector has no authority to advertise delinquent lands in subdivisions different from the assessment. Citing *Blackwell on Tax Titles*, 330. Opinion Att'y Gen. Cole, vol. 1, p. 392.

Where a lot of land is listed for taxation, together with eight others, and so advertised for sale, but the assessment of tax is one aggregate sum on all, a separate sale and conveyance of them is unlawful and confers no title. *Wiley v. Scoville*, 9 Ohio R., 43.

An omission of the record to show that a copy of the notice of an application for judgment against lands and lots, for taxes due thereon, is filed as a part of the records of the court, is fatal to the application. The filing of such copy is an essential part of the necessary foundation for the judgment sought. *People ex rel. v. The owners, etc.*, 82 Ill. R., 408.

A certificate of publication stating that "the foregoing was duly published in the *Peoria Democratic Press*," etc., immediately following the tax list, will be held to refer to such tax list, and it will be presumed that the paper was a newspaper. *Jackson v. Cummings*, 15 Ill. R., 451.

The law in relation to change of venue and trial by jury has no application to proceedings for judgment against delinquent lands. *Mix v. The People ex rel.*, 86 Ill. R., 312.

The collector is not bound to prove, on an application for judgment against delinquent lands, that the land was regularly assessed, or make any proof of the acts of the assessor. It will be presumed the assessor and all other officers did their duty. If any objections exist, it is for the land owner to show them. *Mix v. The People ex rel.*, 86 Ill. R., 312.

On application for judgment, it is no defense that the property was valued too high, when it was not fraudulently done. *Spencer v. The People*, 68 Ill. R., 510.

(1) Personal property tax when added to real estate becomes a part of the tax charge upon such real estate and must so appear in the "delinquent list." Opinion Auditor Needles, May 7, 1878.

clerk of the court or other officer, letters, figures and characters may be used to denote townships, ranges, sections, parts of sections, lots or blocks, or parts thereof, the year or the years for which the taxes were due, and the amount of taxes, special assessments, interest and costs; and the whole of the advertisement shall be contained in one edition of such newspaper and its supplement, if such supplement is necessary: *Provided*, that nothing contained in this section shall prevent the county collector from subsequently advertising and obtaining judgment on lands or lots that may have been omitted through no fault of the collector, or that may have been erroneously advertised or described in the first advertisement.¹

191. **When application for judgment made, etc.]** § 185. All applications for judgment and order of sale for taxes and special assessments on delinquent lands and lots shall be made at the June term of the county court. If, from any cause, the court shall not be holden at the term at which judgment is prayed, the cause shall stand continued; and it shall not be necessary to re-advertise the list or notice required by law to be advertised before judgment and sale, but at the next regular term thereafter the court shall hear and determine the matter; and if judgment is rendered, the sale shall be made on the Monday specified in the notice, as provided in section 182, such Monday to be fixed by the county collector in the notice. If, for any cause, the collector is prevented from advertising and obtaining judgment at said term it shall be held to be legal to obtain judgment at any subsequent term of said court; but if the failure arises by the county collector's not complying with any of the requirements of this Act, he shall be held on his official bond, for the full amount of all taxes and special assessments charged against him: *Provided*, that any such failure on the part of the county collector shall not be allowed as a valid objection to the collection of any tax or assessment, or to rendition of a judgment against any delinquent lands or lots, included in the application of the county collector: *And, provided, further*, that on the application for judgment, at such subsequent term, it shall not be deemed necessary to set forth or establish the reasons of such failure: *And, provided, further*, that in counties where Probate Courts have been or may hereafter be established it shall be lawful to make such application for judgment and order of sale to the May term of the county court. [As amended by Act which became a law and in force June 26, 1895. Laws 1895, p. 297.]

(2) *Chiniquy v. The People*, 78 Ill., 570.

192. Copies of paper containing advertisement.] § 186. The printer, publisher, or financial officer or agent of the newspaper publishing the list of delinquent lands and lots, shall transmit, by mail or other safe conveyance, to the collector, four copies of the paper containing said list, to one of which copies he shall attach his certificate, under oath, of the due publication of the delinquent list for the time required by law (which copy shall be presented by the collector to the county court at the time judgment is prayed), and said copy shall be filed as part of the records of said court. Upon receipt of said papers, and on demand being made, the collector shall pay to the printer the amount of the fees allowed by law for publishing said list and notice; and it shall be his duty to file one copy of said paper in his office, and deliver one copy to the auditor, and one copy to the state treasurer, who shall file and safely preserve them in their respective offices.² [See Revised Statute, chap. 53, § 22.

193. Error in advertisement.] § 187. In all cases where there is an error in the advertised list, the fault thereof being the printer's, which prevents judgment from being obtained against any tracts or lots, or against all of said delinquent list, at the time stated in the advertisement that judgment will be applied for, the printer shall lose the compensation allowed by this Act, for such erroneous tracts or lots, or entire list, as the case may be.

194. Delinquent list—Form.] § 188. The collector shall transcribe into a book, prepared for that purpose, and known as the tax, judgment, sale, redemption, and forfeiture record, the list of delinquent lands and lots, which shall be made out in numerical order, and contain all the information necessary to be recorded, at least five days before the commencement of the term at which application for judgment is to be made; which book shall set forth the name of the owner, if known; the proper description of the land or lot, the year or years for which the tax or special assessments are due; the valuation on which the tax is extended; the amount of the consolidated and other taxes and special assessments; the costs and total amount of charges

(2) An affidavit of the printer of a newspaper of the publication of the delinquent list, and notice of applying for judgment properly sworn to, which states the day when the publication was made, and the paper in which the list and notice were inserted, will be sufficient proof of publication to confer jurisdiction on the court to render judgment. *Buck v. The People*, 78 Ill. R., 560.

A certificate of the publisher of a newspaper sworn to, showing a state of facts which meets the requirements of the law as to the publication of notice of an application for judgment for taxes against delinquent lands, is sufficient, though it may not be in the precise words of the statute. *Fisher v. The People*, 84 Ill. R., 491.

When the delinquent list is placed in the hands of the printer by the collector he is authorized to charge and collect the printers fee provided for by law, although the owner of land may offer to pay the taxes before the paper containing the list is actually published. *Thatcher v. The People*, 79 Ill. R., 597.

against such land or lot. Said book shall also be ruled in columns, so as to show the amount paid before the rendition of judgment; the amount of judgment, and a column for remarks; the amount paid before sale and after the rendition of said judgment, the amount of the sale, amount of interest or penalty, amount of cost, amount forfeited to the state, date of sale, acres or part sold, name of purchaser, amount of sale and penalty, taxes of succeeding years, interest and when paid, interest and cost, total amount of redemption, date of redemption, when deed executed, by whom redeemed, and a column for remarks, or receipt, of redemption money. [As amended by Act approved May 29, 1879. In force July 1, 1879. Laws 1879, p. 248.

195. Tax may be paid before sale.] § 189. Any person owning or claiming lands or lots upon which judgment is prayed, as provided in this Act, may, in person or by agent pay the taxes, special assessments, interest and costs due thereon, to the county collector of the county, in which the same are situated, at any time before sale. [As amended by Act approved May 29, 1879. In force July, 1879. Laws 1879, p. 249.

196. Payments reported—List corrected.] § 190. On the first day of the term at which judgment on delinquent lands and lots is prayed, it shall be the duty of the collector to report to the clerk all the lands, or lots as the case may be, upon which taxes and special assessments have been paid, if any, from the filing of the list mentioned in section one hundred and eighty-eight up to that time; and the clerk shall note the fact opposite each tract upon which such payments have been made. The collector assisted by the clerk, shall compare and correct said list, and shall make and subscribe an affidavit, which shall be as nearly as may be, in the following form:

I, ———, collector of the county of ———, do solemnly swear [*or affirm, as the case may be*] that the foregoing is a true and correct list of the delinquent lands and lots within the county of ———, upon which I have been unable to collect the taxes [*and special assessments, interest, and printer's fees, if any*] charged thereon, as required by law, for the year or years therein set forth; that said taxes now remain due and unpaid, as I verily believe.

Said affidavit shall be entered at the end of the list, and signed by the collector.¹ [As amended by Act approved May 29, 1879. In force July 1, 1879. Laws 1879, p. 249.¹

(1) A collector's report of delinquent lands, which shows that he was collector of taxes for a certain year, and that he had not been able to collect the taxes due on the lands in the report mentioned, sufficiently shows for what year the taxes were levied. *Karnes v. The People*, 73 Ill. R., 274.

The omission of a tract of land or lot from the collector's return of delinquent lands, will not defeat the whole tax. *C. & N. W. R. Co. v. The People*, ex rel, *Miller*, 83 Ill. R., 467.

JUDGMENT.

- 197. Proceedings by court.
- 198. Appeals.
- 199. Proceedings for sale in appeal cases.

197. **Proceedings by court.]** § 191. The court shall examine said list, and if defense (specifying, in writing, the particular cause of objection) be offered by any person interested in any of said lands or lots, to the entry of judgment against the same, the court shall hear and determine the matter in a summary manner, without pleadings, and shall pronounce judgment as the right of the case may be. The court shall give judgment for such taxes and special assessments and penalties as shall appear to be due, and such judgment shall be considered as a several judgment against each tract or lot, or part of a tract or lot, for each kind of tax or special assessment included therein; and the court shall direct the clerk to make out and enter an order for the sale of such real property against which judgment is given, which shall be substantially in the following form.²

Whereas, due notice has been given of the intended application for a judgment against said lands and lots, and no sufficient defense having been made, or cause shown why judgment should not be entered against said lands, and lots, for taxes [special assessments, *if any*], interest, penalties and costs due and unpaid thereon for the year or years herein set forth, therefore it is considered by the court that judgment be and is hereby entered against the aforesaid tract or tracts, or lots of land, or parts of tracts or lots [*as the case may be*], in favor of the people of the State of Illinois, for the sum annexed to each, being the amount of taxes (and special assessments, *if any*), interest, penalties and costs due severally thereon; and it is ordered by the court that the said several tracts or lots of land, or so much of each of them as shall be sufficient to satisfy the amount of taxes [and special assessments, *if any*], interest, penalties and costs annexed to them severally, be sold as the law directs.

Said order shall be signed by the judge. In all judicial proceedings of any kind, for the collection of taxes and special assessments, all amendments may be made which, by law, could be made in any personal action pending in such court, and no assessment of property or charge for any of said taxes shall be

Where a statute requires the tax list to be verified by an oath "made and subscribed," this means an oath duly certified in writing, and the absence of it is fatal to the proceedings. *Yenda v. Wheeler*, 9 Texas R., 408.

A return or report by the collector of taxes before the sitting of the court to which it is by law directed to be made, will be good. *Jackson v. Cummings*, 15 Ill. R., 450.

The provision requiring the affidavit of the collector to be entered at the bottom of the record, would probably be answered if entered in the record, although not exactly or technically at the bottom. *Winder v. Sterling*, 7 Ohio R., 26 post, ¶ 196, § 190.

(2) A judgment for taxes, which fails to show the amount of taxes for which it is rendered, is fatally defective. The use of numerals, without some mark or word indicating for what they stand, is insufficient, and cannot be explained by re-

considered illegal on account of any irregularity in the tax list or assessment rolls, or on account of the assessment rolls or tax lists not having been made, completed or returned within the time required by law, or on account of the property having been charged or listed in the assessment or tax list without name, or in any other name than that of the rightful owner; and no error or informality in the proceedings of any of the officers connected with the assessment, levying or collecting of the taxes, not affecting the substantial justice of the tax itself, shall vitiate or in any manner affect the tax or the assessment thereof; and any

ferring to other judgments entered in a corresponding manner at different times. *Lane v. Bommelmann*, 21 Ill. R., 143; *Elston et al. v. Kennicott et al.*, 46 Ill. R., 189; *Chickering et al. v. Failes et al.*, 38 Ill. R., 342.

Where a precept and judgment is referred to, to sustain a tax sale, the amount should definitely appear in the judgment. An error in the precept might be corrected; but uncertainty as to judgment is fatal. If the judgment is for different taxes, there should be certainty as to each. *Eppinger v. Kirby, et ux.*, 23 Ill., R., 521.

A specific or general judgment for cost in a suit for taxes, as in ordinary cases, is good. *Jackson v. Cummings*, 15 Ill. R., 452; *Merritt et al. v. Thompson*, 13 Ill. R., 727.

Judgment can be rendered only for the amount specified in the collector's notice. *The People ex rel. v. Nichols*, 49 Ill. R., 517.

The want of the dollar mark in the assessment roll, to designate the amount of the valuation or the taxes, will not render the assessment or the collector's warrant invalid and illegal. *Elston et al. v. Kennicott et al.*, 46 Ill. R., 189.

A judgment cannot be rendered for taxes, a part of which are shown by the record to be illegal. *Campbell et al. v. People*, 41 Ill. R., 454.

Where material omissions occurred in the record of a judgment, a correction at a subsequent term of the court was sustained. *Atkins v. Kinman*, 2 Gilm. R., 450.

A judgment rendered on a day prior to that named in the collector's notice, or where the report of the collector does not comply with the law, is void. *Pickett v. Hartsock*, 15 Ill. R., 282.

The county court has jurisdiction to render judgment against delinquent lands, for taxes, at any regular term after April in each year. The statute has not limited the rendition of judgment to the first Monday in May; nor does it, in terms, require that it shall be at that or any particular term. *Stilwell et al. v. People*, 49 Ill. R., 45; *Opinion Auditor Miner*, Jan. 20, 1867.

Where application was made for judgment at the June term of the county court, and the court refused to enter judgment because the list had not been filed five days, and a new application was made to the next August term. Held, that the refusal at the June term, not having been on the merits, formed no bar to rendering a judgment on the second application. *Stilwell et al. v. People*, 49 Ill. R., 45.

There may be considerable doubt whether the county clerk has any right to go behind the list compared and corrected by the collector and clerk, unless some person interested in the lands included therein, appears and objects to the entry of judgment. Unless such is the case, the court is not required to determine whether the antecedent proceedings are regular. *Opinion Auditor Lippincott*, Nov. 12, 1869. An appearance in such a case does not have the effect to waive a material defect in the proceedings. *The People ex rel. v. Nichols*, 49 Ill. R., 517.

It will be presumed that taxes are properly and legally assessed, and are legally and justly due, in the absence of proof to the contrary. The collector's list and report of delinquent lands in the manner prescribed by statute, entitle him to judgment, unless the tax payer satisfactorily shows that the taxes have been paid, or some other legal defense to the merits. *Buck v. The People*, 78 Ill. R., 560.

In counties under township organization, the county collector, and not the sheriff, is the proper person to make application for judgment against delinquent lands for taxes. *Beers et al. v. The People ex rel.*, 83 Ill. R., 488.

The courts are not inclined to entertain merely formal objections to taxes levied by municipalities, where the irregularities complained of do not affect unjustly the rights of the citizen. *Purrlington et al. v. The People, ex rel.*, 79 Ill., R., 11. Courts can only look to objections which affect the substantial justice of the tax. *Thatcher v. The People, ex rel.*, 79 Ill. R., 579.

Where a party appears before the county court and makes specific objections to a judgment for taxes against his land, but none on account of the levy not being properly made, he tacitly admits the legality of the levy, and can not be permitted to question it for the first time in the Supreme Court. *Kamet v. The People*, 73 Ill. R., 274.

irregularity or informality in the assessment roll or tax lists, or in any of the proceedings connected with the assessment or levy of such taxes or any omission or defective act of any officer or officers connected with the assessment or levying of such taxes, may be, in the discretion of the court, corrected, supplied and made to conform to law by the court, or by the person (in the presence of the court) from whose neglect or default the same was occasioned.¹ [As amended by Act approved May 3, 1873. See § 88, Const., art. 9, § 4.

198. Appeals.] § 192. Appeals from the judgment of the court may be taken during the same term to the Supreme Court on the party praying an appeal executing a bond to the People of the State of Illinois, with two or more sureties to be approved by the court, in some reasonable amount to be fixed by the court, conditioned that the appellant will prosecute his said appeal with effect, and will pay the amount of any tax assessment, and cost which may finally be adjudged against the real estate involved in the appeal by any court having jurisdiction of the cause. But no appeal shall be allowed from any judgment for the sale of lands or lots for taxes, nor shall any writ of error to reverse such judgment operate as a supersedeas, unless the party praying such appeal or desiring such a writ of error, shall before taking such appeal or suing out such writ of error, deposit with the county collector an amount of money equal to the amount of the judgment and costs. If in case of an appeal, or suing out a writ of error, the judgment shall be affirmed in whole or in part, the supreme court shall enter judgment for the amount of the taxes with damages, not to exceed ten per cent, and order that the amount deposited with the collector, aforesaid, or so much thereof as may be necessary, shall be credited upon the judgment so rendered, and execution shall issue for the balance of said judgment, damages and costs. The clerk of the supreme court shall transmit to said county collector, a certified copy of the order of affirmance, and it shall be the duty of the collector, upon receiving the same, to apply so much of the amount deposited with him, as aforesaid, as shall be necessary to satisfy the amount of the judgment of the supreme court, and to account for the same as collected taxes. If the judgment of the county court shall be reversed and cause remanded for a rehearing, and if upon the rehearing, judgment shall be rendered for the sale of lands or lots for the taxes, or any part thereof, and such judgment be not

(1) *Law v. The People, ex rel. Miller*, 80 Ill., 268; *Lehmer v. The People*, 80 Ill., 601; *Walsh v. The People, ex rel. Rumsey*, 79 Ill., 521; *Thatcher v. The People, ex rel. Miller*, 79 Ill., 597; *Buck v. The People, ex rel. Swigert*, 78 Ill., 560; *Chiniquy v. The People, ex rel. Swigert*, 78 Ill., 570; *Dunham v. Miller*, 75 Ill., 379; *Andrews v. The People*, 75 Ill., 605; *Walker v. The People*, 75 Ill., 614; *Gage v. People*, 213 Ill., 347, 410.

appealed from, or a writ of error prosecuted with supersedeas issued thereon, as herein provided, the clerk of the county court shall certify to the county collector the amount of such judgment, and thereupon it shall be the duty of the county collector to certify to the county clerk the amount deposited with him, as aforesaid, and the county clerk shall credit the said judgment with the amount of such deposit, or so much thereof as will satisfy the judgment, and the county collector shall be chargeable with, and accountable for, the amount so credited, as collected taxes. Nothing herein contained shall be construed as requiring an additional deposit in case of more than one appeal or writ of error being prosecuted in said proceedings. If, upon a final hearing, judgment shall be refused for the sale of lands or lots for the taxes, or any part thereof, the collector shall pay over to the party who shall have made said deposit, or his legally authorized agent or representatives, the amount of the deposit, or so much thereof as shall remain after the satisfaction of the judgment against the premises in respect of which such deposit shall have been made.¹ [As amended by Act approved May 25, 1877. In force July 1, 1877. Laws 1877, p. 174.]

199. Proceedings in case of appeal.] § 193. If judgment is rendered by any court, at any time, against any lands or lots, for any tax or special assessment, the county collector shall, after publishing a notice for sale, in compliance with the requirements of section one hundred and eighty-two of this chapter, proceed to execute such judgment by the sale of lots and lands against which such judgment has been rendered: *Provided, however,* that in case of an appeal from any such judgment the collector shall not sell until such appeal is disposed of. [As amended by Act approved May 29, 1879. In force July 1, 1879. Laws 1879, p. 249.]

SALE OF DELINQUENT LANDS.

- 200. Process of sale.
- 201. Payments noted on list. (Repealed.)
- 202. County clerk to assist in sale.
- 203. Entry of sale—Redemption.
- 204. County to furnish book. (Repealed.)
- 205. Forfeited tracts noted.
- 206. "Sale and redemption record."
- 207. Manner of conducting sale.
- 208. How sold.
- 209. Forfeited to the State.
- 210. Failure of collector to attend—Liability—Subsequent sale.
- 211. Failure of county clerk to attend.
- 212. Payment by purchaser.

(1) Fowler v. Pirkins, 77 Ill., 271; Andrews v. Rumsey et al., 75 Ill., 598; Bryant et al. v. The People, 71 Ill., 32.

213. Certificate of purchase—Assignable—Exception.

214. Index to tax sale books.

200. **Process for sale.]** § 194. On the day advertised for sale, the county clerk, assisted by the collector shall carefully examine said list upon which judgment has been rendered, and see that all payments have been properly noted thereon, and said clerk shall make a certificate to be entered on said record, following the order of court that such record is correct, and that judgment was rendered upon the property therein mentioned for the taxes, interest and costs due thereon, which certificate shall be attested by the clerk under seal of the court and shall be the process on which all real property or any interest therein shall be sold for taxes, special assessments, interest and costs due thereon and may be substantially in the following form.¹

I, ———, clerk of the county court, in and for the county of ———, do hereby certify that the foregoing is a true and correct record of the delinquent real estate in said county, against which judgment and order of sale was duly entered in the county court of said county, on the ——— day of ———, 19—, for the amount of the taxes, special assessments, interest and costs due severally thereon as therein set forth, and that the judgment and order of court in relation thereto fully appears on said record.

[As amended by Act approved May 29, 1879. In force July 1, 1879. Laws 1879, p. 249.]

201. [Repealed by Act approved May 29, 1879. In force July 1, 1879. Laws 1879, p. 250.]

202. **County clerk to assist in sale.]** § 196. The county clerk, in person or by deputy, shall attend all sales of real estate for taxes, made by the collector, and shall assist at the same. [See ¶ 211, § 205.]

203. **Entry of sale—Redemption.]** § 197. When any tract or lot shall be sold, it shall be the duty of the clerk to enter on the record aforesaid, the quantity sold and the name of the purchaser, opposite such tract or lot, in the blank columns provided for that purpose; and when any such property shall be redeemed from sale, the clerk shall enter the name of the person redeem-

(1) Under the Constitution, sale of lands for non-payment of taxes, or special assessments for State, county, municipal or other purposes, is to be made by the general officer of the county having authority to receive State and county taxes. *Hills v. City of Chicago*, 60 Ill. R., 86; *Otes v. City of Chicago*, 62 Ill. R., 299; *Webster v. City of Chicago*, 62 Ill. R., 302.

The precept or certified copy of judgment on which sale is made for non-payment of taxes, is not process in the strict sense of the word, and need not run in the name of the people. *Curry v. Hinman*, 11 Ill. R., 424; *Scarritt v. Chapman*, 11 Ill. R., 444.

The notice of application for judgment and sale stands as process, and must be regular in all respects. *Scammon v. City of Chicago*, 40 Ill. R., 146.

Where the report of the collector simply shows the total amount of taxes due, without specifying whether the delinquent tax was due to the State or county, such error is fatal, and the purchaser at the tax sale can acquire no title. *Fox v. Turtle*, 55 Ill. R., 377.

ing, the date, and amount of redemption, in the proper column. [See ¶ 216, § 210, ¶ 219, § 213.]

204. County to furnish book.] § 198. The book for such record shall be furnished at the expense of the county, and be so ruled that there shall be suitable blank columns for entering the quantity or portion of each tract or lot that may be sold, the name of the purchaser, and such other columns as may be deemed necessary. [Repealed by Act approved May 29, 1879. In force July 1, 1879. Laws 1879, p. 250.]

205. Forfeited tracts noted.] § 199. All tracts or lots forfeited to the state at such sale, as hereinafter provided, shall be noted on said record.

206. Sale and redemption record.] § 200. Said book shall be known and designated as the tax judgment sale, redemption and forfeiture record, and be kept in the office of the county clerk. [As amended by Act approved May 29, 1879. In force July 1, 1879. Laws 1879, p. 250.]

207. Manner of conducting sale.] § 201. The collector, in person, or by deputy, shall attend at the court house in his county, on the day specified in the notice for the sale of real estate for taxes, and then and there, between the hours of nine o'clock in the forenoon and four o'clock in the afternoon, proceed to offer for sale, separately, and in consecutive order, each tract of land or town or city lot in the said list on which the taxes, special assessments, interest or costs have not been paid. The sale shall be continued from day to day, until all the tracts or lots in the delinquent list shall be sold or offered for sale.¹ [As amended by Act which became a law and in force June 26, 1895. Laws 1895, p. 299. See § 204.]

(1) It is the duty of the collector at tax sale to offer the tracts and lots separately, and to collect the taxes at the least possible loss to the owner. To allow a person to select from the list a portion of the delinquent lands, and become the purchaser of the whole for the tax due, without competition, is fraudulent. *Brown et al. v. Hogle et al.*, 30 Ill. R., 120.

In the sale of lands for taxes, the law must be strictly pursued in all its material requirements, or the sale will be invalid. *Lane v. Bommelmenn*, 21 Ill. R., 143; *Holbrook v. Dickinson*, 46 Id., 285.

Where the law authorizing a tax is unconstitutional, a tax sale under it is void, and the case will be treated as if no assessment had ever been made. *Holbrook v. Dickinson*, 46 Ill. R., 285; *Springer v. Rossetter et al.*, 47 Id., 223.

A valid tax sale, after a deed is acquired, passes a new and perfect title to the purchaser. It is superior in its nature to title under an ordinary sheriff's deed. *Atkins v. Hinman*, 2 Gilm. R., 449.

It is fraud for a tenant in common to permit lands held in common to be sold for taxes, and become himself the purchaser. *Brown et al. v. Hogle et al.*, 30 Ill. R., 119.

When a tax sale is not legally conducted, it works no forfeiture to the owner, and no rights are acquired. *Conway v. Cable et al.*, 37 Ill. R., 82.

The omission of essential acts in conducting a tax sale cannot be cured by legislative enactments so as to render the sale valid. And where the officers conducting the sale agree with the purchaser to receive a part only of the amount of taxes due, the agreement is illegal. *Conway v. Cable et al.*, 37 Ill. R., 82.

Lands must be sold as listed. If a block of town lots are listed as one block, they must be sold in a body and redeemed in a body; but in case of a large number

208. How sold.] § 202. The person at such sale offering to pay the amount due on each tract or lot for the last percentage thereon as penalty, shall be the purchaser of such tract or lot: *Provided*, that no bid shall be accepted for a penalty exceeding twenty-five per cent of the amount of such tax or special assessment. [As amended by Act which became a law and in force June 26, 1895. Laws 1895, p. 299.]

209. Forfeited to the state.] § 203. Every tract or lot so offered at public sale, and not sold for want of bidders, shall be forfeited to the state of Illinois: *Provided, however*, that whenever the county judge, county clerk and county treasurer shall certify that the taxes on forfeited lands equals or exceeds the actual value of such lands, the officer directed by law to expose for sale lands for delinquent taxes shall, on the receipt of such certificate, offer for sale to the highest bidder the tract or lands, in such certificate described, after first giving ten days' notice of the time and place of sale, together with a description of the tract or lands so to be offered. And a certificate of purchase shall be issued to the purchaser at such sale as in other cases in this Act provided; and the county collector shall receive credit in his settlement with the custodian of the several funds, for which such tax was levied for the amount not realized by such sale. And the amount received from any such sale shall be paid by such collector, *pro rata*, to the custodian of the several funds entitled thereto. [As amended by Act approved June 2, 1881. In force July 1, 1881. Laws 1881, p. 137.]

210. Failure of collector to attend.] § 204. If any collector, by himself or deputy, shall fail to attend any sale of lands or lots advertised according to the provisions of this Act, and make sale thereof as required by law, he shall be liable to pay the amount of taxes, special assessments and costs due upon the lands or lots so advertised. Said collector may afterwards advertise and sell such delinquent property to reimburse himself for the amount

of town lots, held for purposes of speculation, the owner may not be able to redeem all, or for special reasons may desire to redeem a part. In summary proceedings this right is preserved to the owner. Opinion Att'y Gen. Cole, (Minn.) vol. 1, p. 400.

A purchaser at a sale, having an interest in the land as heir, acquires no additional title; nor does a person claiming title to land which is listed in his name, acquire any greater interest by permitting it to be sold for taxes and becoming the purchaser. *Choteau v. Jones et al.*, 11 Ill. R., 322. Nor can a mortgagor, by such an act, defeat the lien of the mortgage. The purchase by him at tax sale will be regarded as payment of taxes. *Frye v. Bank of Illinois*, 11 Ill. R., 383; *Moore v. Titman*, 44 Id., 367.

An agent for the payment of taxes on lands, who allows them to be sold, and becomes the purchaser, will hold the lands as trustee for his principal. *Burton et al. v. Moss*, 32 Ill. R., 50.

A person having an agreement for a conveyance of lands, in which he is obliged to pay the taxes, acquires no title by allowing them to be sold and becoming the purchaser. The act will be regarded as mere payment of taxes. *Oliver et al. v. Crosswell*, 42 Ill. R., 42.

advanced by him; but at no such sale shall there be any property forfeited to the State. [See ¶ 207, § 201.]

211. Failure of county clerk to attend.] § 205. If any county clerk shall fail to attend any tax sale of real estate, either in person or by deputy, or to make and keep the record, as required by this Act, he shall forfeit and pay the sum of \$500, and shall be liable to indictment for such failure, and upon conviction shall be removed from office. Said sum shall be sued for in an action of debt, in the name of the People of the State of Illinois, and when recovered shall be paid in the county treasury. [See ¶ 202, § 196.]

212. Payment by purchaser.] § 206. The person purchasing any tract or lot, or any part thereof, shall forthwith pay to the collector the amount charged on such tract or lot, and on failure so to do, the said tract or lot shall be again offered for sale in the same manner as if no such sale had been made; and in no case shall the sale be closed until payment is made, or the tract or lot again offered for sale.

213. Certificate of purchase — Assignable — Exception.] § 207. The county clerk shall make out and deliver to the purchaser of any lands or lots sold as aforesaid, a certificate of purchase, to be countersigned by the collector, describing the land or lot sold as the same was described in the delinquent list, date of such sale, the amount of taxes, special assessments, interest and cost for which the same was sold, and that payment has been made therefor. If any person shall become the purchaser of more than one tract or lot, he may have the whole or one or more of them included in one certificate. Such certificate of purchase shall be assignable by indorsement, and an assignment thereof shall vest in the assignee, or his legal representatives, all the right and title of the original purchaser. *Provided*, that said clerk shall include in such certificate of purchase not to exceed one lot, block, tract or piece of land as listed, assessed and sold in one description, except in cases where such lot, block, tract or piece of land is owned by one party or person. [As amended by Act approved May 13, 1903. In force July 1, 1903. Laws 1903, p. 298. See ¶ 231, § 225.]

214. Index to tax sale books.] § 208. The county clerk is hereby authorized to make an index to tax sale records in a book, when furnished by the county—which index shall be kept in the county clerk's office as a public record, open to the inspection of all persons during office hours.

CERTIFIED COPY OF SALE LISTS TO BE SENT TO AUDITOR.

215. In twenty days after sale.

215. In twenty days after sale.] § 209. The county clerk

shall, within twenty days after any sale for taxes, make out and transmit to the auditor a transcript of sales for taxes, which shall be written on foolscap paper, made up and stitched in book form, suitable for binding. The clerk shall certify to the correctness of said transcript, under the seal of his office. Said list shall not include any tracts or lots forfeited to the state at such sale. The county clerk, for failure to make out, furnish or forward said list, as herein required, shall forfeit and pay into the state treasury the sum of \$500, to be recovered in an action of debt, in the name of the People of the State of Illinois, in any court in this state having competent jurisdiction.

REDEMPTION.

- 216. Time of redemption—Amount.
- 217. When purchaser suffers land to be sold again.
- 218. Books, etc.—Evidence—Clerk to pay over money to successor.
- 219. Sales in error—Entry.
- 220. Purchaser at erroneous sale paid back.
- 221. Effect of receipt of redemption money.

216. Time of redemption—Amount.] § 210. Real property sold under the provisions of this Act may be redeemed at any time before the expiration of two years from the date of sale, by payment in legal money of the United States to the county clerk of the proper county, the amount for which the same was sold together with the amount of the penalty bid at such sale, if redeemed at any time before the expiration of six months from the day of sale. If between six and twelve months, *the amount for which the same was sold together with twice the amount of the penalty bid*; if between twelve and eighteen months, *the amount for which the same was sold together with three times the amount of the penalty bid*; and if between eighteen months and two years, *the amount for which the same was sold together with four times the amount of the penalty bid at said sale*. The person redeeming shall also pay the amount of all taxes and special assessments accruing after such sale with seven (7) per cent. *penalty* thereon, unless such subsequent tax or special assessment has been paid by or on behalf of the person for whose benefit the redemption is made and not by the purchaser at the tax sale or his assignee;¹ *and it is*

(1) On paying redemption money it is deemed absolutely necessary for the clerk to require the surrender of the certificate as a condition precedent to paying over the money. Or. in lieu of the certificate, satisfactory proof by affidavit of the loss or destruction thereof, without transfer or assignment. Opinion Auditor Miner, May 29, 1868.

When, under claim and color of title all the taxes legally assessed are paid for the full period of limitation, a bar is created to the redemption of any portion of the property. *Chickering et al. v. Failes ex rel., et al.*, 38 Ill. R., 342.

The provisions of the limitation act of 1839 empowering minors to redeem land sold for taxes, within three years after attaining their majority, by paying to the person who has paid the tax, the amount with interest, do not take from them the right to redeem within one year after his majority, by paying double the amount, etc., to the collector. *Holloway et al. v. Clark*, 27 Ill. R., 488.

hereby made the duty of the county clerk to include the amount of the subsequent taxes or special assessments paid by the purchaser or holder of the tax certificate in his certificate of redemption. If the real property of any minor heir, idiot or insane person shall be sold for non-payment of taxes or special assessments, the same may be redeemed at any time after sale and before the expiration of one year after such disability be removed upon the terms specified in this section, and upon the payment of ten (10) per cent per annum the amount due including penalties from and after the expiration of two years from the date of sale, which redemption may be made by themselves, or by any person in their behalf. Tenants in common or joint tenants shall be allowed to redeem their individual interests in real property sold under the provisions of this Act, in the same manner and under the terms specified in this section for the redemption of other real property; any redemption made shall inure to the benefit of the person having the legal or equitable title to the property redeemed, subject to the right of the person making the same to be reimbursed by the person benefited. [As amended by Act which became a law and in force June 26, 1895. Laws 1895, p. 299.]

217. When purchaser suffers land to be sold again.] § 211. If any purchaser of real estate sold for taxes or special assessment shall suffer the same to be forfeited to the state, or again sold for taxes or special assessment, before the expiration of the last day of the second annual sale thereafter, such purchaser shall not be entitled to a deed for such real property until the expiration of a like term from the date of the second sale or forfeiture, during which time the land shall be subject to redemption, upon the terms and conditions prescribed in this Act; but the person redeeming shall only be required to pay, for the use of such first purchaser, the amount paid by him. The second purchaser, if any, shall be entitled to the redemption money, as provided for in the preceding section: *Provided, however,* it shall not be necessary for any municipal corporation which shall

In the redemption of land belonging to infants, if the clerk has failed to file the affidavit by which the right to redeem was established, the right to redeem may be shown if the validity of the redemption is questioned. *Chapin v. Cortenius et al.*, 15 Ill. R., 432.

Under the revenue law of 1845 lands sold for taxes were redeemable, within two years by the payment of double the amount for which they were sold, all taxes accruing after such sale, with six per cent interest in such paid taxes, if any were paid, from the first day of May in each year up to the time of payment. The Act of 1853, amendatory thereof, changes the rate of interest from six to ten per cent, but fixed no certain day from which it should be computed, except that it should be from the day of sale, whenever that may be. The "day of sale" here alluded to is the day on which a sale might take place in each year, if the subsequent taxes were not paid, and not the day of the first sale under which the tax purchaser claims. If the purchaser pays no subsequent taxes he can claim no interest. *Comstock v. Cover*, 35 Ill. R., 470.

bid in its own delinquent special assessments, at any sale, in default of other bidders, to protect the property from subsequent forfeitures or sales, as above required in this section. [As amended by Act approved May 29, 1879. In force July 1, 1879. Laws 1879, p. 250.]

218. Books, etc., evidence.] § 212. The books and records belonging to the office of county clerk, or copies thereof, certified by said clerk, shall be deemed *prima facie* evidence to prove the sale of any land or lot for taxes or special assessments, the redemption of the same, or payment of taxes or special assessments thereon.

Clerk to pay over money to successor.] The county clerk shall, at expiration of his term of office, pay over to his successor in office all moneys in his hands received for redemption from sale for taxes on real estate. [As amended by Act approved May 3, 1873.]

219. Sales in error—Entry.] § 213. Whenever it shall be made to appear to the satisfaction of the county clerk that any tract or lot was sold, and that such tract or lot was not subject to taxation, or upon which the taxes or special assessments had been paid previous to the sale of said tract or lot, or arises from a double assessment, or that the description is void for uncertainty, he shall make an entry opposite to such tracts or lots in the sale and redemption record that the same was erroneously sold, and such entry shall be *prima facie* evidence of the fact therein stated; and unless such error is disproved the county collector shall, on demand of the owner of the certificate of such sale, refund the amount paid and cancel such certificate so far as it relates to such tract or lots. The collector, shall take credit in settlement of his accounts thereafter with such officers as he may be liable to for their *pro rata* amounts respectively paid as aforesaid. [As amended by Act which became a law and in force June 26, 1895. Laws 1895, p. 299.]

220. Purchaser at erroneous sale paid back.] § 214. When the purchaser at such erroneous sale, or any one holding under him, shall have paid any tax or special assessment upon the property so sold, which has not been paid by the owner of the property, he shall have the right to recover from such owner the amount he has so paid, with ten per cent interest, as money paid for the owner's use.

221. Effect of receipt of redemption money.] § 215. The receipt of the redemption money of any tract of land or lot,

by any purchaser, or the return of the certificate of purchase for cancellation, shall operate as a release of all the claim to such tract or lot, under, or by virtue of the purchase.

TAX DEEDS.

- 222. Notice.
- 223. Affidavit—evidence—perjury.
- 224. Printer's fee.
- 225. When entitled to deed.
- 226. Deed may include several tracts—Fee—Exception.
- 227. Form of tax deed.
- 228. Evidence recorded.
- 229. Applies to former sales.
- 230. Effect of deed as evidence—Repayment.
- 231. When deed must be taken out.

222. **Notice.]** § 216. Hereafter no purchaser or assignee of such purchaser of any land, town or city lots at any sale of lands, or lots, for taxes or special assessments, due either to the State or county, or incorporated town or city within the same, or at any sale for taxes or levies otherwise, by the laws of this State, shall be entitled to a deed for lands or lots so purchased, until the following conditions have been compiled [complied] with, to wit: Such purchaser, or assignee shall serve or cause to be served a written or printed, or partly written or partly printed notice of such purchase on every person in actual possession or occupancy of such land or lot; also upon the person in whose name the same was taxed or especially assessed, if, upon diligent inquiry, he or she can be found in the county, also, the owners of or parties interested in said land or lot, including trustees or mortgages of record, if they can upon diligent inquiry be found in the county, at least three months before the expiration of the time of the redemption on such sale, in which notice he shall state when he purchased the land or lot, in whose name taxed, the description of the land or lot he has purchased; for what year taxed or specially assessed, and when the time of redemption will expire.

If no person is in possession or occupancy of such land or lot, and the person, in whose name the same was taxed or especially assessed, upon diligent inquiry, cannot be found in the county, or said owners of, or parties interested in said land or lot upon diligent inquiry cannot be found in the county, then such person, or his assignee shall publish such notice in some newspaper printed and published in such county, and if no newspaper is printed in said county, then in the newspaper that is published in this State nearest the county seat of the county in which such land or lot is situated, which notice shall be inserted three times, the first time not more than five months, and the last time not less

than three months, before the time of redemption shall expire: *Provided, however*, that if said owners of said land or lot, or said parties interested therein, cannot be found in the county and the person in actual occupancy is tenant to, or is in possession under said owner or said party interested therein, then service of said notice upon said tenant or occupant shall be deemed service upon said owner or party interested: *Provided, however*, that if the said owners or parties interested are unknown to such purchaser or his assignee, then the said publication, as to them, may be to the unknown owner or parties interested as aforesaid: *And, provided, further*, that said notice of publication shall include not to exceed one lot, block, tract or piece of land as listed, assessed and sold in one description, except in cases where more than one lot, block, tract or piece of land is owned by one party or person, in which case all the lots, blocks, or tracts owned by such persons may be included in one notice. When any person who, by the terms of this section, is entitled to be served with notice cannot, upon diligent inquiry be found, the affidavit in the preceding section provided for shall set forth particularly the inquiries made, of whom made, and when and where made. [As amended by Act approved June 26, 1913. In force July 1, 1913. Laws 1913, p. 519.

223. **Affidavit—Evidence—Perjury.**] § 217. Every such purchaser or assignee, by himself or agent, shall, before he shall be entitled to a deed, make an affidavit of his having complied with the conditions of the foregoing section, stating particularly the facts relied on as such compliance—which affidavit shall be delivered to the person authorized by law to execute such tax deed, and which shall by him be filed with the officer having custody of the record of the lands and lots sold for taxes and entries of redemption in the county where such lands or lots shall lie, to be by such officer entered on the records of his office, and carefully preserved among the files of his office, and which record or affidavit shall be *prima facie* evidence that such notice has been given. Any person swearing falsely in such affidavit shall be deemed guilty of perjury, and punished accordingly.

224. **Printer's fee.**] § 218. In case any person shall be

A published notice cannot be received as the substitute for the notice to be personally delivered to the party concerned. Cooley on Taxation, p. 218. And where a notice is to be given personally and also by publication a failure in either is a failure. Appeal Powers, 29 Mich. R., 504.

A purchaser of land at tax sale is not entitled to a deed until the lapse of two years; a deed given before that time is not notice to the grantee of the purchaser, of the illegality. A tax deed may be good as color of title, although not so as permanent title. Boman v. Wetting, 39 Ill. R., 418.

A tax title is purely technical, as contra distinguished from meritorious title, and depends for its validity upon a strict compliance with the statute; and any omission, as the seal of the officer making it, will not be corrected by a court of chancery. Altes v. Hincklee et al., 36 Ill. R., 265.

compelled to publish such notice in a newspaper, then, before any person who may have a right to redeem such lands or lots from such sale shall be permitted to redeem, he shall pay the officer or person who by law is authorized to receive such redemption money, the amount paid for printer's fee for publishing such notice, for the use of the person compelled to publish such notice as aforesaid; the fee for such publication shall not exceed \$1 for each tract or lot contained in such notice.

225. When entitled to deed.] § 219. At any time after the expiration of two years from date of sale of any real estate for taxes or special assessments, if the same shall not have been redeemed, the county clerk, on request, and on the production of the certificate of purchase, and upon compliance with the three preceding sections, shall execute and deliver to the purchaser, his heirs or assigns, a deed of conveyance for the real estate described in such certificate.

226. Deed may include several tracts—Fee—Exception.] § 220. When any person shall hold more than one certificate of purchase at the same sale, and for the same year's tax or special assessment, the clerk shall, on the request of the holder of such certificate, include as many tracts or lots described therein in the deed of conveyance as such person may desire, and for which deed the county clerk shall have a fee of fifty cents for each certificate embraced therein: *Provided*, that no greater fee than \$3 shall be charged upon any one deed. *Provided, further*, that said clerk shall include in such deed not to exceed one lot, block, tract or piece of land as listed, assessed and sold in one description, except in cases where such lot, block, tract or piece of land is owned by one party or person. [As amended by Act approved May 13, 1903. In force July 1, 1903. Laws 1903, p. 299.]

Where the defendant in ejectment, in resisting a tax title, repels the resumption by proof that the land in controversy has been duly listed, the plaintiff will be required to prove, affirmatively, that there was a proper listing. *Schuyler et al. v. Hall*, 11 Ill. R., 465; *Tibbets v. Job et al.*, 11 Ill. R., 460.

A party seeking to substantiate a tax title, must exhibit: first, a valid judgment against the land; second, a valid precept authorizing the officer to make the sale; and, third, a proper conveyance of the land from the proper officer. These are essential to the validity of the title, and none of them can be dispensed with. *Atkins v. Hinman*, 2 Gilm. R., 448.

The construction of a tax deed in respect to the description of the land conveyed, must be the same as if such description were used in a deed between private individuals. The doctrine of strict construction, as applied to the execution of naked statutory powers, has no application in such cases. *Blakely v. Bestor*, 13 Ill. R., 715.

Courts of chancery will not take jurisdiction to try the validity of tax titles, on the ground that they are a cloud. *Springer v. Rosette et al.*, 47 Ill. R., 223.

A deed of land sold for taxes under the revenue law of 1839, made either by the officer making the sale or his successor in office, is valid. *Bestor v. Powell et al.*, 2 Gilm. R., 727.

An auditor's deed to land, made in pursuance of a sale for taxes, under the law of 1827, will not show a complete title in a party, without proof that the prerequisites of the law have been complied with. *Irving v. Brownell*, 11 Ill. R., 411. It has been held that if any portion of a tax upon which a judgment was rendered, was illegal, or if the judgment was for too large a sum, even to the extent of a few cents, a sale and tax deed based upon such judgment, would be void. *McLaughlin v. Thompson*, 55 Ill. R., 249.

227. Form of tax deed.] § 221. The deed so made by the county clerk under the official seal of his office shall be recorded in the same manner as other conveyances of real estate, and shall vest in the grantee, his heirs and assigns, the title of the property therein described without further acknowledgment or evidence of such conveyance, and said conveyance shall be substantially in the following form:

State of Illinois, }
 ——— County, }

Whereas, at a public sale of real estate for the non-payment of taxes, made in the county aforesaid on the ——— day of ———, A. D. 19—, the following described real estate was sold, to-wit: [*here place description of real estate conveyed*], and whereas, the same not having been redeemed from said sale, and it appearing that the holder of the certificate of purchase of said real estate has complied with the laws of the State of Illinois necessary to entitle [*insert him, her or them*] to a deed of said real estate. Now, therefore, know ye, that I, ———, county clerk of said county of ———, in consideration of the premises and by virtue of the statutes of the state of Illinois in such cases provided, do hereby grant and convey unto ———, his heirs and assigns forever, the said real estate hereinbefore described, subject, however, to any redemption provided by law.

Given under my hand and seal of our court this ——— day of ———, A. D. 19—. County Clerk.

[As amended by Act approved May 3, 1873. See ¶ 231, § 225.]

228. Evidence recorded.] § 222. County clerks shall record as evidence upon which deeds are issued, the application, all affidavits and notices filed with the application, the certificate of sale, and all other documents and papers filed in compliance with law, and be entitled to the same fee therefor that may be allowed by law for recording deeds. [As amended by Act approved May 13, 1903. In force July 1, 1903. Laws 1903, p. 299.]

229. Applies to former sales.] § 223. The foregoing six sections shall apply to all sales of real estate for taxes heretofore made, as well as to such sales for taxes and special assessments hereafter to be made.

230. Effect of deed as evidence—Repayment.] § 224. Deeds executed by the county clerk, as aforesaid, shall be *prima facie* evidence, in all controversies and suits in relation to the right of the purchaser, his heirs or assigns, to the real estate thereby conveyed of the following facts: *First*, That the real estate conveyed was subject to taxation at the time the same was assessed, and had been listed and assessed in the time and manner required by law. *Second*, That the taxes or special assessments were not paid at any time before sale. *Third*, That the real estate conveyed had not been redeemed from the sale at the date of the deed. *Fourth*, That the real estate was advertised for sale in the

manner and for the length of time required by law. *Fifth*, That the real estate was sold for taxes or special assessments, as stated in the deed. *Sixth*, That the grantee in the deed was the purchaser or assignee of the purchaser. *Seventh*, That the sale was conducted in the manner required by law. And any judgment for the sale of real estate for delinquent taxes rendered after the passage of this Act, except as otherwise provided in this section, shall estop all parties from raising any objections thereto, or to a tax title based thereon, which existed at or before the rendition of such judgment or decree, and could have been presented as a defense to the application for such judgment in the court wherein the same was rendered, and as to all such questions, the judgment itself shall be conclusive evidence of its regularity and validity in all collateral proceedings, except in cases where the tax or special assessments have been paid, or the real estate was not liable to the tax or assessment: *Provided*, That any judgment or decree of court setting aside any tax deed procured under this Act, shall provide that the claimant shall pay to the party, holding such tax deed, all taxes and legal costs, together with all penalties, as provided by law, as it shall appear the holder of such deed or his assignors, shall have properly paid or be entitled to in procuring such deed, before such claimant shall have the benefits of such judgment or decree. [As amended by Act returned by the Governor July 7, 1885, to the Secretary of State without his approval or veto, and is therefore in force. Laws 1885, p. 235.]

231. When deed must be taken out.] § 225. Unless the holder of the certificate for real estate purchased at any tax sale under this Act, takes out the deed as entitled by law, and files the same for record within one year from and after the time for redemption expires, the said certificate or deed, and the sale on which it is based, shall, from and after the expiration of such one year, be absolutely null. If the holder of such certificate shall be prevented from obtaining such deed by injunction or order of any court, or by the refusal of the clerk to execute the same, the time he is so prevented shall be excluded from the computation of such time. Certificates of purchase and deeds executed by the county clerk shall recite the qualifications required in this section. [See ¶ 213, §207.]

FORFEITED PROPERTY.

- 232. County clerk to keep record of. (Repealed.)
- 233. Redemption or purchase of forfeited property.
- 234. Report and payment of money collected on forfeited land.
- 235. Back tax added—Effect.
- 236. Suit for tax on forfeited property.

232. County clerk to keep record of—Repealed.] § 226. Each county clerk shall procure, at the expense of the county, a suitable record book, in which they shall keep a record of the real property forfeit to the state under the provisions of this act. Such book shall be properly ruled and headed, and proper columns provided for the several taxes and charges, redemptions and sales thereof. [Repealed by Act approved May 29, 1879, In force July 1, 1879. Laws 1879, p. 250.]

233. Redemption or purchase of forfeited property.] § 227. If any person shall desire to redeem or purchase any tract of land or lot forfeited to the state, he shall apply to the county clerk, who shall issue his order to the county collector, directing him to receive from said person the amount due on said tract or lot, which shall in no case be less than ten per cent. on all taxes heretofore forfeited, and twenty-five per cent. on all taxes hereafter levied and forfeited, in addition to the tax, special assessments, interest and printer's fees due thereon, particularly describing the property and setting forth the amount due; and upon presentation of said order to the county collector, he shall receive said amount and give the person duplicate receipts therefor, setting forth a description of the property and the amount received—one of which shall be countersigned by the county clerk, and when so countersigned, shall be evidence of the redemption or sale of the property therein described, as the case may be, but no such receipt shall be valid until it is countersigned by the county clerk. The other receipt shall be filed by the county clerk in his office, and said clerk shall make a proper entry of the redemption or sale of the property on the books in his office, and charge the amount of the redemption or sale money to the county collector. In cases of sales, the collector and clerk shall make the receipt in the form of a certificate of purchase. Property purchased under this section shall be subject to redemption, notice, etc., the same as if sold at regular public tax sale. (See ¶ 231, §225..) [As amended by Act approved May 31, 1879. In force July 1, 1879. Laws 1879, p. 254.]

234. Report and payment of money collected on forfeited land.] § 228. It shall be the duty of the county clerk, annually, when he makes return of the amount of taxes levied, to report to the auditor the amount due the state on account of the redemption and sales of such forfeited property, and said auditor shall charge the same to the collector. If the collector who received said redemption or sale money shall be succeeded in office, he shall pay the amount in his hands over to his successor, who shall pay said amount into the state treasury when he settles for the taxes of the current year.

235. Back tax added—Effect.] § 229. The amount due on land and lots previously forfeited to the state, and remaining unpaid on the first day of November, shall be added to the tax of the current year; and the amount thereof shall be reported against the county collector with the amount of the taxes for said year; and the amount so charged shall be placed on the tax books, collected and paid over in like manner as other taxes. The county collector is hereby authorized to advertise and sell said property in the manner hereinbefore required by this Act, as if said property had never been forfeited to the State, and the county, city, town or school district may, by their agent, attend such sale for taxes and buy said lands and acquire the same rights that individuals now have under the law, and acquire, hold, sell and dispose of said title thereto, the same as and in the same manner as individuals may do under the laws of this State, in case of sale for taxes. Said additions and sales shall be continued from year to year, until the taxes on said property are paid, by sale or otherwise. [As amended by Act approved May 31, 1881. In force July 1, 1881. Laws 1881, p. 138.]

236. Suit for tax on forfeited property.] § 230. The county board may, at any time, institute suit, in an action of debt in the name of the People of the State of Illinois, in any court of competent jurisdiction for the whole amount due on forfeited property; or any county, city, town, school district, or other municipal corporation, to which any such tax may be due, may at any time institute suit in an action of debt, in its own name, before any court of competent jurisdiction, for the amount of such tax due any such corporation on forfeited property, and prosecute the same to final judgment. The county board may, also, at any time, institute suit in an action of debt in the name of the People of the State of Illinois, in any court of competent jurisdiction, against any person, firm or corporation, for the recovery of any personal property tax due from such person, firm or corporation, and in any such suit for the recovery of personal property tax, the return of the county collector that such taxes are delinquent, shall be *prima facie* evidence that such taxes are due and unpaid, but the fact that such taxes are due and unpaid may be proven by other competent testimony. This Act shall apply to all taxes heretofore levied against any person, firm or corporation and now upon any assessment book or roll, and on the sale of any property following such judgment, on execution or otherwise, any such county, city, town, school district or other municipal corporation, interested in the collection of said tax, may become purchaser at such sale of either real or personal property, and if the property so sold is not redeemed

(in case of real estate) may acquire, hold, sell and dispose of the title thereto, the same as individuals may do, under the laws of this State; and in any such suit or trial for forfeited taxes, the fact that real estate or personal property is assessed to a person, firm or corporation, shall be *prima facie* evidence that such person, firm or corporation was the owner thereof, and liable for the taxes for the year or years for which the assessment was made, and such fact may be proved by the introduction in evidence of the proper assessment book or roll, or other competent proof. [As amended by Act approved May 30, 1881. In force July 1, 1881. Laws 1881, p. 129.]

FINAL SETTLEMENT OF COUNTY COLLECTOR.

- 237. Statement to county clerk.
- 238. Credit on forfeited property—Printer's fee.
- 239. Settlement with county board.
- 240. When collector to account with clerk.
- 241. Clerk to certify to auditor.
- 242. Clerk to certify to local authorities, etc.
- 243. Credits on final settlement—Examination of accounts.
- 244. Final order—Corrections, etc.

237. Statement to county clerk.] § 231. On or before the third Monday in June, annually, the county collector shall make out and file with the county clerk a statement in writing, setting forth, in detail, the name of each person charged with personal property tax which he has been unable to collect, by reason of the removal or insolvency of the person charged with such tax, the value of the property, and the amount of tax, the cause of inability to collect such tax, in each separate case, in a column provided in the list for that purpose. Said collector shall, at the same time, make out and file with the county clerk a similar detailed list of errors in assessment of real estate and errors in footing of tax books, giving in each case a description of the property, the valuation and amount of several taxes and special assessments, and cause of error. The truth of the statements contained in such lists shall be verified by affidavit of the county collector. County collectors, in cases of removals and insolvencies, may give, as the cause of inability to collect, the same cause as sworn to by the town or district collectors, stating in their return the fact that such was the statement made by the town or district collector, and that such tax still remains uncollected.

238. Credit on forfeited property—Printers' fee.] § 232. If any lands or lots shall be forfeited to the State for taxes or special assessments, the collector shall be entitled to a credit in his final settlement, for the amount of the several taxes and special

assessments thereon—the county to allow the amount of printers' fees thereon, and be entitled to said fees so allowed, when collected.

239. Settlement with county board.] § 233. On the third Monday in June, annually, the county board shall settle with and allow the county collector credit for such allowance as he may be legally entitled to. [See ¶ 248 § 242.

240. When collector to account with clerk.] § 234. If there be no session of the county board held at the proper time for settling and adjusting the accounts of the county collector, it shall be the duty of the collector to file the lists with the county clerk, who shall examine said lists and correct the same, if necessary, in like manner as said board is required to do. Said county clerk shall make an accurate computation of the value of the property and the amount of the delinquent tax and special assessments returned, for which the collector is entitled to credit.

241. Clerk to certify to auditor.] § 235. The county clerk shall immediately, in either case, certify to the auditor of public accounts the valuation of property, and the amount of State taxes due thereon, for which the collector may be allowed credit.

242. Clerk to certify to local authorities, etc.] § 236. The county clerk shall also, at the same time, certify to the several authorities or persons with whom the county collector is to make settlement, showing the valuation of property and amount of taxes and special assessments due thereon allowable to said collector in the settlement of their several accounts.

243. Credits on final settlement—Examination of accounts, etc.] § 237. The auditor and other proper authorities or persons shall, in their final settlements with the collector, allow him credit for the amount so certified: *Provided*, that if the auditor or such other proper authorities or persons shall have reason to believe that the amount stated in said certificate is not correct, or that the allowance was illegally made, he or they shall return the same for correction; and when the same shall appear to be necessary, in the opinion of the auditor or such other proper authorities or persons, he or they shall designate and appoint some competent person to examine the collector's books and settlement, and the person so designated and appointed shall have access to the collector's books and papers, appertaining to such collector's office or settlement, for the purpose of making such examination. [See ¶ 248, § 242.

244. Final order—Corrections, etc.] § 238. In all cases when the adjustment is made with the county clerk, the county board shall, at the first session thereafter, examine such settle-

ment, and if found correct shall enter an order to that effect; but if any omission or error is found, said board shall cause the same to be corrected, and a correct statement of the facts in the case forwarded to the auditor and other proper authorities or persons, who shall correct and adjust the collector's accounts accordingly.

PARTIAL SETTLEMENT OF COUNTY COLLECTORS.

- 245. April statement to clerk.
- 246. Clerk to notify auditor, etc., amount due them.
- 247. April payment to state treasurer.
- 248. Effect of failure of collector to obtain judgment.
- 249. April payment to local authorities.
- 250. To pay cities, etc., every ten days.
- 251. Failure to make report—Suit.
- 252. Failure to account and pay over—Suit.

245. April statement to clerk.] § 239. On or before the tenth day of April, annually, after he has made settlement with town or district collectors, the county collector shall make a sworn statement, showing the total amounts of each kind of tax received by him from town or district collectors, and the total amount of each collected by himself—which statement shall be filed in the office of the county clerk. [As amended by Act approved May 3, 1873.]

246. Clerk to notify auditor, etc., amount due them.] § 240. The clerk shall immediately, on the receipt of such statement, certify to the auditor and to other proper authorities or persons, the amount for which the collector is required to settle with them severally.

247. April payment to state treasurer.] § 241. The county collector shall, on or before the fifteenth day of April following, pay over to the state treasurer the taxes in his hands, payable to the state treasury, as shown by the statement required by § 239 of this Act. [As amended by Act approved May 3, 1873.]

248. Effect of failure of collector to obtain judgment.] § 242. The failure of any county collector to obtain judgment shall not prevent him from presenting his statement of credits, and making settlement for taxes and special assessments in his hands, at the time required by this Act; but if, from no fault of the collector, he fail to obtain judgment and sale of delinquent real estate at the time required by this Act, shall be allowed, in his settlements, a temporary credit for the amount of taxes and special assessments in such delinquent list, which delinquent taxes and special assessments shall be accounted for and paid immediately after sale is had. [See ¶ 238, § 232.]

249. April payment to local authorities.] § 243. He shall, within the same time, pay over to the other proper authorities or persons, the amounts so shown to be in his hands, and payable to them.

250. To pay cities, etc., every ten days.] § 244. The county collector shall report and pay over the amount of tax and special assessments, due to towns, districts, cities, villages, corporations and persons, collected by him on delinquent property, at least once in every ten days, when demanded by the proper authorities or persons. [See Revised Statutes, chap. 24, § 113.

251. Failure to make report—Suit.] § 245. Any county collector failing to make the reports and payments hereinbefore required, for five days after the time specified for that purpose, or after demand made as aforesaid, the auditor or such other authorities or persons, may bring suit upon the collector's bonds.

252. Failure to account and pay over—Suit.] § 246. If any county collector fails to account and pay over as required in the preceding sections, his office may be declared vacant by the county board, or by any court in which suit is brought on his official bond.

FINAL SETTLEMENT OF THE COUNTY COLLECTOR FOR STATE TAXES.

- 253. Manner of making settlement, etc.
- 254. Duplicate statement—Correction.
- 255. Over-payment refunded.
- 256. How paid into treasury—Duplicate receipts.
- 257. Interest on money due state.
- 258. Auditor's certificate of settlement—Filing same.

253. Manner of making settlement.] § 247. The county clerk shall make out and deliver to the county collector, as soon as adjustment is made with the county board or county clerk, annually, the statements, certificates and lists appertaining to the settlement of the accounts of such collector; which statement, certificates and lists shall be made out in proper form, under his seal of office, on blanks which it is hereby made the duty of [the] auditor to furnish, annually, for that purpose. The collector shall deliver the same at the office of the auditor, and make a final settlement of his accounts, and pay the amount due the State into the State treasury on or before the first day of July next after receiving the tax books: *Provided*, that in all cases where the statements, certificates and lists appertaining to the final settlement of a collector are on file with the auditor, on or before the first day of July, the auditor shall not charge interest on the balance found due on the account of such collector, for

fifteen days after mailing said auditor's statement showing balance due the State on such collector's account: *Provided, further*, that this section shall not be held to relieve any collector from the payment of interest charged on his account by reason of failure to make payment to the State, at other time or times, as required by this or any other Act of the General Assembly of this State [As amended by Act approved May 3, 1873.

254. Duplicate statement to auditor. § 248. The county clerk shall furnish a duplicate copy of said statement, duly certified, whenever requested so to do by the auditor.

Correction.] If the statement of credits herein required, or any of the items therein, are objected to by the auditor, he shall return the statement to the county clerk, stating his objections, and said clerk shall examine and correct or explain the same satisfactorily, and return the statement to said auditor.

255. Over-payment refunded.] § 249. If any collector shall have paid, or may hereafter pay, into the State treasury, any greater sum or sums of money than are or may be legally and justly due from such collector, after deducting abatements and commissions, the auditor shall issue his warrant for the amount so overpaid, which shall be paid out of the fund or funds so overpaid on said warrant.

256. How paid into treasury—Duplicate receipt.] § 250. Upon ascertaining the amount due to the State from any collector or other person, the auditor shall give such person a statement of the amount to be paid, and upon the presentation of such statement of the State treasurer, and the payment of the sum stated to be due, the treasurer shall give duplicate receipts therefor, one of which shall be filed in the auditor's office, and entered in a book to be kept for that purpose, and the other shall be countersigned by the auditor and delivered to the person making the payment; and no payment shall be considered as having been made until the treasurer's receipt shall be countersigned by the auditor as aforesaid.

257. Interest on money due State.] § 251. Any collector failing to pay into the State treasury the amount due to the State, on his account for State and other taxes, at the time or times required by this Act, shall pay interest at the rate of ten per cent. per annum, from the time the same became due under this Act, until the same is paid; and it shall be the duty of the auditor to charge such interest to the account of every collector failing to pay at the time or times required in this Act. In no case shall the auditor be permitted to remit such interest, unless satisfactory evidence from the county board is presented to him,

showing, by official action taken by such board, lawful cause why the collector could not pay over, in part or in whole, the amount due on such collector's account with the State.

258. Auditor's certificate of settlement—Filing same.] § 252. Upon the final settlement of any account with the State, the auditor shall give the collector duplicate certificates, under his seal of office, setting forth that said collector has settled and paid into the State treasury the full amount due from him on said account; and it shall be the duty of the collector to file one of said certificates in the office of the county clerk, on or before the first day of August next after receiving the tax books. If any collector shall neglect or refuse to file one of said certificates as above required, the county clerk shall leave a written notice at the office of said collector, requiring him to appear before the county court, at the September term thereof, and show cause why he has not filed the certificate aforesaid; and if the collector shall not show that he has paid over the full amount due from him, and made a final settlement with the State and county, or that he has a lawful excuse for failing to do so, his office as collector and treasurer shall be declared vacant by said court, and the same filled as in other cases of vacancy by reason of death or otherwise.

LIENS OF TAXES.

259. Of tax on real estate.

260. Tax on personality.

261. Real and personal tax.

262. Lien in favor of agent, etc., for tax paid.

259. Of tax on real estate.] § 253. The taxes upon real property, together with all penalties, interests and cost, that may accrue thereon, shall be a prior and first lien on such real property, superior to all other liens and incumbrances, from and including the first day of May in the year in which the taxes are levied until the same are paid,¹ which lien may be foreclosed in equity in any court of competent jurisdiction in the name of the People of the State of Illinois, whenever the taxes for two or more years, upon the same description of property, shall have been forfeited to the State, and may be sold under the order of the court by the person having authority to receive State and county taxes, with the same notice to interested parties and right of redemption from said sale, as is now provided by law, and in conformity with sections four and five of Article IX of the Constitution of this State. In proceedings to foreclose the tax

(1) The payment of taxes by any person extinguishes them, and if a voluntary attempt is made to pay them a second time, the last will be considered a gratuity to the taxing power. *Morrison v. Kelley*, 22 Ill. R., 626.

lien on any real property, the amount due on the collector's books against the said property shall be *prima facie* evidence of the amount of taxes against the said real property. When any taxes are collected in any such foreclosure proceedings, they shall be paid to the county collector, to be distributed by him to the respective authorities entitled thereto. (As amended by Act approved May 30, 1881. In force July 1, 1881. Laws 1881, p. 130. See ¶ 355, § 53.

260. Tax on personalty.] § 254. The taxes assessed upon personal property shall be a lien upon the personal property of the person assessed, from and after the time the tax books are received by the collector.

261. Real and personal tax.] § 255. Personal property shall be liable for taxes levied on real property, and real property shall be liable for taxes levied on personal property; but the tax on personal property shall not be charged against real property, except in cases of removals, or where said tax cannot be made out of the personal property; but the tax on real property may be made out of personal property, at any time after the tax becomes due, by any collector having the tax books in his hands, by distraint and sale, in the manner provided in this act: *Provided*, that judgment against real property, for non-payment of taxes thereon, shall not be prevented by showing that the owner thereof was possessed of personal property subject to distraint; and no person shall be subject to have his personal property distrained and sold for tax on real estate, which may have been listed and assessed in his name, when he makes oath, or otherwise satisfies the collector, that he did not own such real property on the preceding first day of May.¹ [See ¶ 189, § 183.

A tax receipt which erroneously states the number of acres in a tract of land but describes a legal subdivision, is good; the statement of the quantity is immaterial. *Morrison et al. v. Norman et al.*, 47 Ill. R., 478.

The receipt describing the premises on which the taxes were paid, by No. 5 placed in a column headed "lot," and 9 in the next column headed "block," then followed the figure 8 in the column headed "lot," but with no number opposite thereto in the column headed "block." Held, that this description was sufficient to justify the inference, nothing appearing to the contrary, that lot was in the same block as lot 5. *Daniels v. Barso*, 40 Ill. R., 307.

An affidavit of loss of receipts might authorize proof of their contents, but not the introduction of the collector's book to prove the word "paid" entered on them, the contents of such receipts. *Irwin v. Miller*, 23 Ill. R., 401.

Where taxes have been paid upon property legally liable to taxation, they cannot be recovered back, although the assessment was informal and irregular, and not strictly in conformity with the statute, or the statute itself defective in respect to the manner in which the assessment is directed to be made. *Board of Supervisors of Stephenson Co. v. Manny*, 56 Ill. R., 160.

(1) Personal property is subject to distraint and sale for taxes assessed upon real estate, if the same is still in force. It has been supposed that the amendment to ¶ 143, § 137, passed in 1873, operated as a repeal of ¶ 261, § 255. I do not concur in this view. Opinion of Att'y Gen'l Edsall, March 22, 1877.

On the foregoing subject Auditor Needles says: "The intention of the General Assembly was so manifest in its amendment to § 137, that the then auditor at once ruled that personal property could not be distrained for tax on real estate, by town or district collectors, and such has continued to be the ruling of this office." Auditor Needles, Dec. 31, 1877.

262. Lien in favor of agent, etc., for tax paid.] § 256. When property is assessed to any person as agent for another, or in a representative capacity, such person shall have a lien upon such property, or any property of his principal in his possession, until he is indemnified against the payment thereof, or, if he has paid the tax, until he is reimbursed for such payment.

WHO NOT ELIGIBLE AS BONDSMAN.

263. Certain officers.

263. Certain officers.] § 257. No judge of the county court, chairman of the county board, clerk of the circuit court, county clerk, sheriff, deputy sheriff or coroner shall be permitted to be a surety on the bond of a county, town, district or deputy collector or county treasurer.

LIABILITY ON BONDS.

264. Specified.

264. Specified.] § 258. The bond of every county, town or district collector shall be held to be security for the payment by such collector to the State treasurer, county treasurer, and the several cities, towns and villages, and proper authorities and persons, respectively, of all taxes and special assessments which may be collected or received by him on their behalf, by virtue of any law in force at the time of giving such bond, or that may be passed or take effect thereafter.

SUITS AGAINST COLLECTORS.

265. Suit by auditor.

266. Jurisdiction—Power of court.

267. Proceedings in suit on bond by others.

268. When bond sued by city, town, etc.

269. Fees when State sues.

265. Suit by auditor.] § 259. Upon the failure of any collector to make settlement with the auditor, or to pay money into the State treasury, it shall be the duty of the auditor to sue the collector and his sureties upon the bond of such collector, or to sue the collector in such form as may be necessary, and take all such proceedings, either upon such bond or otherwise, as may be necessary to protect the interests of the State. [As amended by Act approved March 24, 1874.

266. Jurisdiction—Power of court.] § 260. When suit is instituted in behalf of the State, it may be in either division of

the supreme court, or in the Sangamon county circuit court, or in any court of record in this State having jurisdiction of the amount; and process may be directed to any county in the State. In any proceeding against any officer or person whose duty it is to collect, receive, settle for or pay over any of the revenues of the State, whether the proceeding be by suit on the bond of such officer or person, or otherwise, the court in which such proceeding is pending shall have power, in a summary way, to compel such officer or person to exhibit, on oath, a full and fair statement of all moneys by him collected or received, or which ought to be settled for or paid over, and to disclose all such matters and things as may be necessary to a full understanding of the case; and the court may, upon hearing, give judgment for such sum or sums of money as such officer or person is liable in law or equity to pay. And if, in a suit upon the bond of any such officer or person, he or his sureties, or any of them, shall not for any reason be liable upon the bond, the court may, nevertheless, give judgment against such officer or person, or against such officer and such of his sureties as are liable, for the amount he or they may be liable to pay, without regard to the form of the action or pleadings.]As amended by Act approved March 24, 1874.

267. Proceedings in suit on bond by others.] § 261. When suit has been instituted by the auditor, any party aggrieved may proceed under the judgment obtained, upon the bond, by writ of inquiry of damages, as in other cases upon bonds. [As amended by Act approved March 24, 1874.

268. When bond sued by city, town, etc.] § 262. Cities, towns, villages or corporate authorities, or persons aggrieved, may prosecute suit against any collector or other officer collecting or receiving funds for their use, by suit upon the bond, in the name of the People of the State of Illinois, for their use, in any court of competent jurisdiction, whether the bond has been put in suit at the instance of the auditor or not; and in case of judgment thereon the auditor may, if he shall so elect, have a writ of inquiry of damages for any amount that may be due to the state treasury from such officer. Cities, towns, villages and other corporate authorities or persons, shall have the same rights in any suits or proceedings in their behalf as is provided in case of suits by or in behalf of the State. [As amended by Act approved March 24, 1874.

269. Fees when State sues.] § 263. The State shall pay like fees as are or may be allowed by law in suits between individuals; and in all cases when the State is plaintiff, it shall

advance and pay such fees in like manner as individuals are required to advance and pay fees; and when the State becomes the purchaser of real property sold on execution, for any debt due the State, the officer selling such real estate shall be entitled to like commissions as he would have been entitled to had such property been purchased by an individual—said fees and commissions to be paid on the warrant of the auditor, out of any money in the treasury appropriated for that purpose; and when such fees are collected they shall be paid into the State treasury.

SALE OF REAL ESTATE ON EXECUTION IN BEHALF OF THE STATE—REDEMPTION.

- 270. Notice of levy given to auditor—He to purchase in—Redemption.
- 271. Payment of money collected.
- 272. Where real property not redeemed, timber, etc.

270. Notice of levy given auditor—He to purchase in—Redemption.] § 264. When real estate shall be levied upon to satisfy any judgment in favor of the State, it shall be the duty of the officer making such levy, to transmit by mail, to the auditor, at least twenty days before the day of sale, a correct statement, showing the description and value of said property, in cash; the truth of said statement shall be attested by the oath of said officer. Said officer shall, at the same time, furnish the auditor with an abstract of title of the property levied upon, the expense thereof to be charged and collected as costs. And the auditor is hereby authorized and required to purchase, in his name, for the use of the People of the State of Illinois, at a price not exceeding two-thirds of said value, so much of said property as may be required to pay the amount of the judgments and costs aforesaid; and it shall be the duty of the officer making such sale to forward to the auditor a certificate of purchase, and make his return, as required in other cases of sales on execution. Any person desiring to redeem all or part of said property from such sale, shall pay the amount of redemption money into the State treasury, and thereupon the auditor shall indorse such payment on the back of the certificate of purchase aforesaid, and deliver it to the person so paying, which shall have the same effect as redemptions have in other cases; but no real estate purchased as aforesaid shall be considered redeemed from such sale until the redemption money is paid into the State treasury. Such certificate may be recorded in the recorder's office of the county in which such real property is situated, and shall operate as a release of record of such property.

271. Payment of money collected.] § 265. All moneys received by any sheriff or other officer, on execution, in behalf of

the State, shall be paid by such officer to the State treasurer, or to the collector of his county, as may be directed by the auditor, within twenty days after demand is made by said auditor. Said demand may be made by any person authorized by the auditor.

272. When real property not redeemed—Timber, etc.] § 266. If any real estate, purchased by the State on execution, shall not be redeemed within the time required by law, it shall be the duty of the auditor to obtain a deed or deeds therefor, which he shall cause to be recorded in a book kept for that purpose in his office; and shall take such steps as he shall deem necessary to protect the timber, or fixtures thereon from being lost or destroyed.

DOUBLE PAYMENT AND ASSESSMENT—REFUNDING.

273. Payment by different claimants, return, etc.

274. Double assessment or payment—Refunding.

273. Payment by different claimants—Return, etc.] § 267. Whenever the taxes on the same property shall have been paid more than once, for the same year, by different claimants, the county collector shall make a return to the county clerk of all such surplus taxes so received by him, together with the names of the several claimants thus paying. Certified copies of said return or of record thereof, by the county clerk, or of the county clerk's report, by the auditor, shall be *prima facie* evidence in all courts, when the same shall come in question, of the payment of tax on the property therein described for the year or years therein mentioned. The county clerk shall make a full record of all such cases, and transmit a certified copy thereof to the auditor, who shall charge such collector with the portion of such surplus taxes belonging to the State. The town or district collectors shall report such cases to the county collector, and he to the county clerk.

274. Double assessment or payment—Refunding.] § 268. If any real property shall be twice assessed for the same year, or assessed before it becomes taxable, and the taxes so erroneously assessed shall have been paid, either at sale or otherwise, or have been twice paid by different claimants, the county board, on application of the person paying the same, or his agent, and being satisfied of the facts in the case, shall cause the State and county taxes to be refunded *pro rata* by the State and county; and the city and incorporated town or village taxes and special assessments, by the city or incorporated town, village or other proper authorities or persons. If any county, town or district collector shall receive the taxes or special assessments properly due on

any real property, and the same shall afterwards be sold for said taxes or special assessments, he shall refund to the purchaser thereof, if application be made within three years from the date of said sale, double the amount of purchase money and all expenses of advertising said real estate under this Act, requiring real estate purchased at tax sales to be advertised, including costs of deeds. Any collector neglecting or refusing to pay as required by this section, shall be liable to the county, or person in interest, in an action of debt in any court having jurisdiction.¹ [See ¶ 219, § 213.]

WHEN RECORDS ARE DESTROYED.

275. New assessments.

275. **New assessment.]** § 269. When assessment rolls or collector's books, in whole or in part, of any county, town, city, incorporated village or district, shall be lost or destroyed by any means whatever, a new assessment, or new books, as the case may require, shall be made under the direction of the county board. Said board shall, in such cases, fix reasonable times and dates for performing the work of assessment, equalization, levy, extension and collection of taxes, and paying over the same, or making new books, as the circumstances of the case may require. All the provisions of this Act shall apply to the dates fixed by the county board, in the same manner that they apply to the dates for similar purposes, as fixed by this Act. The county board is hereby fully empowered to select and appoint persons, where it may find the same necessary, to carry into effect the provisions of this section.

OTHER DUTIES OF AUDITOR.

- 276. When a locality does not pay its share of tax.
- 277. Auditor may sell property bought in by State.
- 278. Abstracts—U. S., canal and Illinois Central Railroad lands.
- 279. Forms—Instructions—Opinion.
- 280. Act published.
- 281. Swamp lands.

276. **When a locality does not pay its share of tax.]** § 270. Whenever it shall come to the knowledge of the auditor that any county, township, city, district or town, or any well defined locality thereof, or any particular class of property therein, has heretofore been or may hereafter be released, from any cause

(1) The evidence on which the State tax is refunded is the certificate of the county clerk, showing the action of the board of supervisors. The certificate should describe the property and show the years tax sold for or paid, or both, the amount of State and county tax separate, and the cause of error. Opinion Auditor Lippincott, Dec. 28, 1869.

whatever, from its just proportion of State taxes, said auditor shall cause suit to be commenced in an action of debt, in the name of the People of the State of Illinois, either against the municipality or against the property unjustly released from taxation, or the owners thereof, for the amount of such tax, in the supreme court of this State, in either division thereof; and when judgment may be recovered in any such case, the auditor shall levy a rate of tax on the equalized valuation of all property or particular class of property in such county, township, city, district, town or locality, as the case may be, as will pay the State the amount of such judgment and costs; and it shall be the duty of the county clerk of the proper county to extend such rate of tax with the State tax of the year directed in the auditor's certificate. Any county clerk neglecting or refusing to extend such rate, as certified to him by the auditor, shall be removed from his office, and in addition thereto shall be subject to a fine of \$5,000, and damages caused by such neglect or refusal, to be sued for by the auditor, in an action of debt, in the name of the People of the State of Illinois, in either division of the supreme court of this state: *Provided*, that in cases where the auditor and proper local authorities of the proper municipality, can arrange to make such levy to reimburse the State in such cases, without suit, the auditor is hereby authorized to pursue such course.

277. Auditor may sell property bought in by State.] § 271. The auditor is authorized to sell, transfer and convey, by deed, any and all real estate that may have been heretofore, or may be hereafter, purchased or taken in payment, to satisfy any judgment or any execution in favor of the State, by this State or by any officer of this State, for the benefit and use of the State, to any person or persons who may pay into the State treasury the full amount paid by the State for said property, including costs, and six per cent. interest thereon, from the date of said sale to the time of such payment: *Provided*, that the sale of the real estate, in part or in whole, may be made at such price, not less than the price paid for such part or whole of the property, as the case may be, as the judge of the county court, chairman of the county board, and the sheriff of the county in which the estate is situated, shall certify the same to be worth: or, if not sold in one year from and after the expiration of the time of redemption now or hereafter allowed by law, said property may,

After a deed has been given, erroneous sales can only be canceled by the voluntary return of the deed. Opinion Auditor Lippincott, Aug. 20, 1869.

In no case can the State be compelled to refund a tax voluntarily paid, upon a claim of technical illegality in the assessment, provided the property on which it was paid was legally taxable. *People ex rel, v. Miner*, 46 Ill. R., 374.

if the auditor thinks the valuation fair, be sold by said auditor upon and for any valuation of said property which may be appraised and certified by the judge of the county court, chairman of the county board and sheriff of the county in which such property is situated.

278. Abstracts, United States, Canal and Illinois Central Railroad lands.] § 272. On the first day of May in each year, or as soon thereafter as practicable, the auditor shall obtain from the United States land office in this State abstracts of the lands entered and located, and not previously obtained, and shall, at the same time, obtain from the Illinois Central railroad, and Canal offices, abstracts of the Central railroad and Canal lands sold. Upon the receipt of said abstracts, the auditor shall cause them to be transcribed into the tract books in his office, and shall, without delay, cause abstracts of the land in each county, including school lands reported to his office as having been sold, to be made out and forwarded by mail to the county clerks of the several counties; and said clerks shall cause such abstracts to be transcribed into the tract book, and filed in their office. The expense of procuring and furnishing the abstracts required by this section, shall be paid by the auditor out of the appropriation for the expenses of his office.

279. Forms—Instructions—Opinion.] § 273. It shall be the duty of the auditor to make out and forward to each county clerk, from time to time, for the use of such clerks and other officers, suitable forms and instructions; and all such instructions shall be strictly complied with by the officers in the performance of their respective duties. He shall give his opinion and advice on all questions of doubt as to the true intent and meaning of the provisions of this Act.¹ [See ¶ 295, § 289.]

280. Act published.] § 274. The auditor shall, as soon as practicable after the passage of this Act, cause the same to be correctly printed in pamphlet form, and transmit to each county clerk a sufficient number of copies thereof for the use of the several county, town and district officers; and said clerk shall deliver the same to the proper officers.

281. Swamp lands.] § 275. The county clerks of the several counties shall, annually, report to the auditor a list of the swamp and overflowed lands sold in their respective counties for

(1) The opinions given by an officer whose duty it is by law to give such opinion, in regard to the intent or meaning of a law, as a general rule, will be regarded favorably by the courts, and upheld unless clearly erroneous.

The forms and instructions of the auditor, made out in conformity to law, must be used by the revenue officers. But, if the auditor direct statistical financial or other items of information not required by law, the auditor cannot enforce the performance of such burden by rejecting the return, duly made out in conformity to law. *Stark Co, Bank. v. McGregor*, 6 Ohio St. R., 45.

the year ending on the first day of May, and the auditor shall enter the same in the tract books of his office.

OMITTED PROPERTY—SAVING CLAUSES.

- 282. When discovered listed, and tax added—Personal tax.
- 283. Tax not collected added to subsequent year.
- 284. Not prior to date of ownership—Notice.
- 285. Special assessments—Return limited.
- 286. Failure to complete assessment in time not to vitiate.
- 287. Informality not to vitiate.
- 288. Failure to deliver tax books not to vitiate.
- 289. Wrong name not to vitiate.

282. When discovered listed, and tax added—Personal tax.] § 276. If any real or personal property shall be omitted in the assessment of any year or number of years, or the tax thereon, for which such property was liable, from any cause has not been paid, or if any such property, by reason of defective description or assessment thereof, shall fail to pay taxes for any year or years, in either case the same, when discovered, shall be listed and assessed by the assessor and placed on the assessment and tax books. The arrearages of tax which might have been assessed, with ten per cent. interest thereon, from the time the same ought to have been paid, shall be charged against such property by the county clerk. It shall be the duty of county clerks to add uncollected personal property tax to the tax of any subsequent year, whenever they may find the person owing such uncollected tax assessed for any subsequent year [See ¶ 82, § 77; ¶ 100, § 95.

283. Tax not collected added to subsequent year.] § 277. If the tax or assessment on property liable to taxation is prevented from being collected for any year or years, by reason of any erroneous proceeding or other cause, the amount of such tax or assessment which such property should have paid may be added to the tax on such property for any subsequent year, in separate columns designating the year or years. [As amended by Act approved May 3, 1873.

284. Not prior to date of ownership—Notice.] § 278. No such charge for tax and interest for previous years, as provided for in the preceding section, shall be made against any property prior to the date of ownership of the person owning such property at the time the liability for such omitted tax was first ascertained: *Provided*, that the owner of property, if known, assessed under this and the preceding section, shall be notified by the assessor or clerk, as the case may require.¹

(1) Under ¶ 286, § 280, of the Revenue Law, no objection can be made to the mode in which an assessment for taxation is made. If the property assessed is subject to taxation, and is assessed no more than its ratable share of taxes, it matters

285. Special assessment—Return limited.] § 279. When any special assessment is not returned to the county collector on or before the first day of March next after it is due, the same may be returned on or before the first day of March in the succeeding year; and, if not then returned, it shall be considered barred, unless return is prevented by an injunction or order of court; and the time such return is thus prevented shall be excluded from the computation of such time.

286. Failure to complete assessment in time not to vitiate.] § 280. A failure to complete an assessment in the time required by this Act shall not vitiate such assessment, but the same shall be as legal and valid as if completed in the time required by law.¹

287. Informality not to vitiate.] § 281. No assessment of real or personal property, or charge for taxes thereon, shall be considered illegal on account of any informality in making the assessment, or in the tax lists, or on account of the assessments not being made or completed within the time required by law.

288. Failure to deliver tax books not to vitiate.] § 282. Any failure to deliver the collector's books within the time required by this Act, shall in no way affect the validity of the assessment and levy of taxes, but in all cases of such failure, the assessment and levy of taxes shall be held to be as valid and binding as if said books had been delivered at or within the time required by law. [See ¶ 75, § 70.

289. Wrong name not to vitiate.] § 283. No sale of real estate for taxes shall be considered invalid on account of the same having been charged in any other name than that of the rightful owner. [See ¶ 71, § 66.

WHO MAY ADMINISTER OATHS.

290. Officers enumerated.

290. Officers enumerated.] § 284. Any oath, authorized to be administered under this Act, may be administered by an assessor or deputy assessor, or by any other officer having authority to administer oaths.

PENALTIES OF OFFICERS.

291. For delivering or receiving books before collector's bond filed.

292. Collector—Neglect to obtain judgment, etc.

293. Failure to do any duty under this Act.

294. Refusal by clerk, assessor, collector and other officers to do duty.

not whether the assessment was made in the mode pointed out by the statute or not. *Pacific Hotel Co. v. Lieb et al.*, 83 Ill. R., 602.

A failure to complete an assessment, or to return the same in the time required by the Act, does not vitiate the same, but it must be held as legal and valid as if completed in time. *Wright v. The People ex rel.*, 87 Ill. R., 582.

(1) See ¶ 95, § 90. *Purrington et al. v. The People ex rel. Miller*, 79 Ill., 11; *Chiniquy v. The People*, 78 Ill., 570; *Eurigh v. The People*, 79 Ill., 214.

291. Delivering books before collector's bond filed.] § 285. If any county clerk shall deliver the tax books into the hands of the county collector, or if any collector shall receive said books or collect any taxes until such collector's bond has been approved and filed, as required by this Act, said clerk and collector, and each of them, shall be liable to a penalty of not less than \$500, and all damages and costs, to be recovered in an action of debt; and the auditor shall bring suit therefor, in the name of the People of the State of Illinois—the amount recovered on such fines to be paid into the State treasury as revenue fund. Nothing in this section shall be construed as relieving the securities of a collector from liabilities incurred under a bond not approved and filed by the auditor. [See §§ 141, 151, §§ 135, 145.]

292. Collector—Neglect to obtain judgment, etc.] § 286. If any collector shall, by his own neglect, fail to obtain judgment at the May term of the county court, or shall fail to present his list of delinquencies on personal property, or errors in assessment of real estate, at the time required by this Act, he shall lose the benefit of any abatement to which he might have been entitled, and shall pay to the State and county the full amount charged against him, after deducting the fees allowed by this Act for collecting and paying over taxes. If the county court is not held at the May term, the collector shall have further time to pay over the amount due on the delinquent list.

293. Failure to do any duty under this Act.] § 287. If any officer shall fail or neglect to perform any of the duties required of him by this Act, upon being required so to do by any person interested in the matter, he shall be liable to a fine of not less than \$10 nor more than \$500, to be recovered in an action of debt in the circuit court of the proper county, and may be removed from office at the discretion of the court; and any officer who shall knowingly violate any of the provisions of this Act, shall be liable to a fine of not less than \$10 nor more than \$1,000 to be recovered in an action of debt, in the name of the People of the State of Illinois, in any court having jurisdiction, and may be removed from office at the discretion of the court, and said fines, when recovered, shall be paid into the county treasury.

294. Refusal by clerk, assessor or other officer to do duty.] § 288. Every county clerk, assessor, collector or other officer who shall in any case refuse or knowingly neglect to perform any duty enjoined upon him by this Act, or who shall consent to or connive at any evasion of its provisions, whereby any proceeding required by this Act shall be prevented or hindered, or whereby any property required to be listed for taxation shall be

unlawfully exempted, or the same be entered upon the tax list at less than its fair cash value, shall, for every such offense, neglect or refusal, be liable, on the complaint of any person, for double the amount of the loss or damage caused thereby, to be recovered in an action of debt, in the name of the People of the State of Illinois, in any court having jurisdiction, and may be removed from his office at the discretion of the court.

COUNTY TO FURNISH BOOKS AND BLANKS.

295. Clerk to procure them.

295. Clerk to procure them.] § 289. The county board shall direct the county clerk to procure all necessary books and blanks required by this Act to be used in the assessment of property and collection of taxes, at the expense of the county. [See ¶ 279 § 273; also, "Counties," ¶ 26, § 26.

COUNTY FUNDS—MANNER OF KEEPING ACCOUNTS THEREOF.

296. By collector, etc.

297. By county clerk, etc.

296. By collector, etc.] § 290. The county collector shall, on the first of every month, report to the county clerk, in writing, the amount of county tax received by him during the preceding month, showing what amount of said tax was received in money, and what amount in county orders and jury certificates. The county collector shall keep his account as collector of taxes separate from his account as county treasurer. He shall credit his account as collector with the amount of his monthly reports to the county clerk, and with the amount of insolvencies, removals, errors, forfeitures, and other credits allowed him on settlement with the county board; and as county treasurer he shall charge himself with the amount shown in his monthly report to the county clerk, as aforesaid, and such other amounts as may come into his hands as county treasurer; and he shall, as such treasurer, at the close of each month, cancel the county orders and jury certificates in his hands, and return the same with a descriptive list, giving numbers and amounts properly footed, to the county clerk, who shall carefully compare and file the same in his office, subject to the order of the county board, and give the treasurer a receipt for the same; which receipt shall be the evidence upon which the county treasurer shall take credit in his accounts as such treasurer, with the county, subject to the approval of the county board. The county board shall examine such account and vouchers, at such time or times, by committee or otherwise, as may be deemed requisite.

297. By clerk, etc.] § 291. Each county clerk shall keep an account with the county collector, charging him with the amount of county tax placed in his hands for collection, and with the county tax received by him for sales and redemptions of forfeited property, and with any other funds, belonging to the county, that shall come into the collectors' hands; and shall credit him with the amounts ascertained as required in the preceding section, charged to the county treasurer's account monthly; also, with amount of county tax on insolvencies, removals, errors, forfeited property, etc., whenever ascertained in the manner required by this Act. The county clerks shall also keep a treasurer's account with the county treasurer of their respective counties. The treasurer shall be charged with the amount of money, county orders and jury certificates reported in the collector's monthly statements required to be made in the preceding section, and all amounts paid to the county treasurer from other sources than the county revenue tax; and it is hereby made the duty of all persons paying money into the county treasury, for all purposes except the county taxes, to first obtain from the county clerk an order on the treasurer to receive the same; and the treasurer shall give the person so paying duplicate receipts therefor, one of which shall be countersigned by the county clerk, and retained by the person paying over the amount, and the other filed in the county clerk's office, and the amount thereof charged against the treasurer. The treasurer's account shall be credited, monthly, with the amount of county orders and jury certificates canceled and filed in the county clerk's office, as required in the preceding section.

DEFINITIONS.

298. Words and phrases.

299. Power of county court, until, etc.

298. Words and phrases.] § 292. The words and phrases following, whenever used in this Act, shall be construed to include in their meaning the definitions set opposite the same in this section, whenever it shall be necessary to the proper construction of this Act.

1st. **Assessor—Assessors.**—Town, district and deputy assessors.

2d. **Auditor.**—Auditor of public accounts.

3d. **Bank—Banker—Broker—Stock-jobber.**—Whoever has money employed in the business of dealing in coin, notes or bills of exchange, or in the business of dealing in or buying or selling any kind of bills of exchange, checks, drafts, bank notes,

promissory notes, bonds or other writing obligatory, or stocks of any kind or description whatsoever, or receiving money on deposit.

4th. **Collector—Collectors.**—County, town, district and deputy collectors.

5th. **County board.**—The board of supervisors—the board of county commissioners.

6th. **Credits.**—Every claim or demand for money, labor, interest, or other valuable thing, due or to become due, not including money on deposit.

7th. **He.**—Male, female, company, corporation, firm, society, singular or plural number.

8th. **Money—Moneys.**—Gold, silver or other coin, paper or other currency used in barter and trade as money, in actual possession, and every deposit which the person owning, holding in trust, or having the beneficial interest therein, is entitled to withdraw in money on demand.

9th. **Number.**—The singular number shall include the plural, and the plural number shall include the singular.

10th. **Oath.**—Oath or affirmation.

11th. **Person—Persons.**—Male, female, corporation, company, firm, society, singular or plural number.

12th. **Real property—Real estate—Land—Tract—Lot.**—Not only the land itself, whether laid out in town or city lots, or otherwise, with all things contained therein, but also all buildings, structures and improvements, and other permanent fixtures, of whatsoever kind, thereon, and all rights and privileges belonging or in anywise pertaining thereto, except where the same may be otherwise denominated by this Act.

13th. **Shares of stock—Shares of capital stock.**—The shares into which the capital or stock of every incorporated company or association may be divided.

14th. **Tax—Taxes.**—Any tax, special assessments or costs, interest or penalty imposed upon property.

299. **Power of county court, until, etc.]** § 293. In all counties not under township organization, the county court, or judge of the county court, as the case may require, shall perform all the duties required in this Act to be performed by the county board, or chairman of the county board, as the case may be, in such counties, until such time as the board of county commissioners shall be duly elected and qualified in said counties.

REPEALING CLAUSE.

300. Act repealed.

300. Acts repealed.] § 294. The laws and parts of laws entitled as hereinafter named are hereby repealed:

[The Acts repealed are omitted, as they are enumerated in Revised Stat., chap. 131, § 5.]

The repeal of said Acts and parts of Acts shall not be construed to impair any right existing, or affect any proceeding pending, at the time this Act shall take effect; but all proceedings for the assessment of any tax, or collection of any tax or special assessment then remaining incomplete, may be completed pursuant to the provisions of this Act. The provisions of this Act shall apply to redemptions from sales made for taxes or special assessment previous to the taxing effect hereof, and the mode of giving notice, and issuing deeds upon certificates of sales made for taxes.

FOR THE ASSESSMENT OF PROPERTY AND PROVIDING THE
MEANS THEREFOR.

AN ACT for the assessment of property and providing the means therefor, and to repeal a certain Act therein named. [Approved February 25, 1898. In force July 1, 1898. Laws 1898, p. 34.]

301. In counties not under township organization the county treasurer is *ex-officio* assessor—compensation.
302. In counties under township organization—assessor may appoint deputies—compensation.
303. In counties containing 125,000 or more inhabitants—Board of Assessors—election of—organization of—powers and duties—deputy assessor—appointment of.
304. Assessor and supervisor of assessments to give bond—Official oath—form of.
305. Assessor, etc.—penalty for neglect of duty.
306. Board of Assessors may appoint deputies—term of office—fees—oath—maps.
307. Property subject to assessment and taxation.
308. Property to be listed April 1—how and by whom listed.
309. Real property—when and how listed and assessed.
310. County clerk to make up duplicate books of lands or lots to be assessed for taxes—when made in triplicate.
311. Assessors to receive books and blanks on or before April 1.
312. When the assessor shall assess property—mode of assessment—actual view.
313. Lists—when valuation and entries to be made in duplicate and when in triplicate books—alteration—subdivision.
314. When lands change in value.
315. Valuation of personal property—when and how valued.

316. When and how personal property to be listed.
317. Schedule—assessed value.
318. How real and personal property shall be valued—State Board of Equalization.
319. Schedule—penalty for omission to make.
320. Person refusing to sign and swear to schedule—duty of assessor—penalty.
321. Township assessor—return of assessment books—affidavit.
322. Authority of supervisor of assessments.
323. In counties having a Board of Assessors—revision of assessment.
324. Term of township assessor, etc.
325. Office of Board of Assessors to be kept open during business hours—to furnish information to Board of Review, etc.
326. Changes and alteration in assessment.
327. Person entitled to copy of the description, schedule, etc.
328. Schedule and statements of personal property—custody of.
329. Assessment lists to be published—Board of Review.
330. Board of Review—appointment of—vacancy—how filled—compensation—clerk.
331. Who to constitute the Board—Powers of.
332. In counties of 125,000—Board of Review of three persons—election of—organization and duties.
333. Form of oath to be taken.
334. Meeting of Board to revise assessment—Powers and duties of.
335. Powers and duties of Board of Review.
336. Notices under this Act—How given.
337. Board of Review—when and how changes made upon assessment books.
338. A form of affidavit to be attached to each of the assessment books.
339. Rules and regulations.
340. Failure to complete assessment in time—Not to vitiate.
341. Board of Review—Meeting.
342. Board of Review may examine assessor as to how assessment was made.
343. Delivery of books containing assessments.
344. Conniving at any evasion of this Act—Penalty.
345. Delivering false or fraudulent lists to assessor—Penalty.
346. Duty of State's Attorney to prosecute—Fees—Payment of salary of county assessor, etc.
347. Abstract of the assessment to be sent to Auditor.
348. County collector—Duplicate delinquent lists—When to be made and where to be filed.
349. County clerk to estimate and determine rate per cent—how to be determined.
350. Amount of taxes authorized to be levied.
351. Levy and extension of taxes.
352. State Board of Equalization—time of meeting.
353. The State Board of Equalization may raise or lower total assessed value.
354. When books for the collection of taxes to be delivered to collector.
355. A number of dates for the performance of Acts under the General Revenue Law changed.
356. Board of Assessors—duties and powers of—penalties.
357. Provisions of the General Revenue Act applicable—to remain in force.
358. Majority of Board may act.

359. In counties of 125,000 or over—power of township assessor.
360. Provision in case any county shall hereafter come under the provisions of this Act.
361. Repeal.

301. In counties not under township organization the county treasurer is ex-officio assessor—Compensation.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That in counties not under township organization the County Treasurer shall be *ex-officio* county assessor, and he shall receive as compensation for his services as county assessor, the sum of five hundred dollars (\$500) per annum: *Provided*, that in counties having a population of less than 125,000 and over 50,000 he shall receive the sum of one thousand dollars (\$1,000) per annum. [As amended by Act approved May 15, 1903. In force July 1, 1903. Laws 1903, p. 295.

302. In counties under township organization—Assessor—May appoint deputies—Compensation.] § 2. In counties under township organization of less than 125,000 inhabitants the county treasurer shall be *ex-officio* supervisor of assessments in his county and shall receive as compensation for his services as supervisor of assessments the sum of one thousand dollars (\$1,000) per annum: *Provided*, that in counties having a population of less than 45,000 he shall receive the sum of five hundred dollars (\$500) per annum. He shall have a suitable office, to be provided and furnished by the county board, in which he shall keep, subject to the inspection of all persons who shall desire to consult the same, the assessment books returned to him as directed by law. He shall keep his office open for business from 9 o'clock a. m. to 5 o'clock p. m. of every day except Sundays and legal holidays. He may, by and with the advice and consent of the county board, appoint necessary deputies and clerks, their compensation to be fixed by the county board and paid by the county. The supervisor of assessments shall, on or before the first day of April in each year, assemble all assessors and their deputies for consultation, and shall give such instructions to them as shall tend to a uniformity in the action of the assessors and deputy assessors in his county. Any assessor or deputy assessor who shall wilfully refuse or neglect to observe or follow the directions of the supervisor of assessments, which shall be in accordance with law, shall, upon conviction thereof in any court of competent jurisdiction, for each offense be fined not less than fifty dollars nor more than five hundred dollars, or be confined in the county jail not exceeding six months, in the discretion of the court. In counties under township organization where a

town assessor shall be unable alone to perform all the duties of his office, he may, by and with the advice and consent of the town board of auditors first obtained, appoint one or more suitable persons to act as deputies to assist him in making the assessment.

The compensation of the township assessors shall be as follows: In townships containing not less than five thousand (5,000) inhabitants they shall receive not less than five dollars (\$5.00) nor more than ten dollars (\$10.00) per day: *Provided*, that in townships containing more than fifteen thousand (15,000) inhabitants additional compensation may be allowed, making their entire compensation for making the assessment a sum not exceeding one thousand dollars (\$1,000). In townships containing less than five thousand (5,000) inhabitants they shall receive not less than two and one-half dollars (\$2.50) nor more than five dollars (\$5.00) per day; necessary deputy assessors shall receive not exceeding five dollars (\$5.00) per day. The compensation as herein provided shall be fixed by the board of township auditors, and shall be based upon the time actually employed in the making of such assessment, and such assessors and deputies shall make affidavit of the time so employed. Population as herein used shall be deemed to be the population of such townships as ascertained by the last preceding federal and school census. [As amended by Act approved May 15, 1903. In force July 1, 1903. Laws 1903, p. 295.

303. In counties containing 125,000 or more inhabitants—Board of assessors—Election of—Organization of—Powers and duties—Deputy assessors—Appointment of.] § 3. In all counties of this state containing one hundred and twenty-five thousand or more inhabitants there is hereby created and established a board of assessors, consisting of five persons, not more than four of whom shall be residents of any one city, to be known as the board of assessors of said county. At the regular county election to be held in such county in the year 1898 for the election of county officers, there shall be elected by the legal voters of said county five assessors, whose terms of office shall commence on the first day of January next ensuing, who shall hold their office, two for two years, two for four years, and one for six years, respectively, and until their successors are elected and qualified. And every two years thereafter, at the regular county election in said county for the election of county officers, there shall be elected an assessor, or two assessors, as the case may be, to succeed the assessor or assessors whose term of office shall expire that year, whose term

of office shall commence on the first day of January next following, and shall be six years in duration and until his or their successors shall be elected and qualified. The assessors so elected shall qualify within ten days after the canvass of the vote is completed. Such assessors shall hold no other lucrative public office or public employment. Each of said assessors, before entering upon the duties of his office, shall take and subscribe the oath provided for in this Act. At the first meeting of the board of assessors they shall determine by lot which of them shall hold office for the respective terms. The chairman of the board shall be the person having the shortest term to serve. In the years when two persons shall be serving the shortest term it shall be determined by lot which of such two persons shall be chairman. Each assessor shall receive as compensation such sum as may be fixed by the county board, to be paid out of the county treasury.

In case of any vacancy in said board, or the failure of any person elected to that office to qualify, the board of review provided for in such counties may appoint a person to fill such vacancy until his successor shall be elected and shall qualify, and an assessor to fill such vacancy shall be elected at the next regular county election.

Said board of assessors shall have power to employ a chief clerk, who shall have charge of the office of such board, and such other clerical help as may be necessary subject to the approval of the board of review as to the number thereof, who shall hold office during the pleasure of the board, and who shall be present and in attendance at all proper business hours. Such chief clerk shall take and subscribe an oath of office that he will honestly and faithfully perform all duties of such office under the direction of said board, and he shall have power to administer all oaths authorized by law to be administered by assessors, and the compensation of such clerk shall be fixed by such board subject to the approval of the board of review, not to exceed ten dollars per day, for each working day.

In all townships in such counties not lying wholly within the limits of one city, the township assessor shall be *ex-officio* the deputy assessor to make the assessments in the township wherein he is elected: *Provided*, That if, in any such township, said township assessor shall not be able, by himself alone, within the time allowed by law to make the assessment of said township, then any additional deputy assessor, or deputy assessors, required to make such assessment, shall be residents and legal voters of such township, and shall be nominated by the board of auditors of such township, and appointed by the board of as-

sessors only upon such nomination, and deputy assessors so appointed shall act under the supervision of the *ex-officio* deputy town assessors.¹ [As amended by Act approved June 26, 1913. In force July 1, 1913. Laws 1913, p. 510.]

304. Assessor and supervisor of assessments to give bonds—Official oath—Form of.] § 4. Every assessor and supervisor of assessments shall, before he enters upon the duties of his office, enter into a bond, payable to the people of the State of Illinois in the sum of two thousand dollars or such larger sum as the county board shall determine, with two or more sufficient sureties, to be approved by the president or chairman of the county board, except in the case of the supervisor of assessments, whose bond shall be approved by the count board: *Provided*, that township assessors in counties having less than one hundred and twenty-five thousand inhabitants shall be required to give bond only in the sum of five hundred dollars each, with sureties as above provided. Said bond to be approved by the supervisor of their respective towns. The condition of the bond shall be that such assessor or supervisor of assessments, as the case may be, will diligently, faithfully and impartially perform each and singular the duties enjoined upon him by law. Such bonds shall be filed in the office of the county clerk and recorded at large in a book to be provided for such bonds. The state, county, town or any municipality, corporation or person suffering any loss or damage by reason of any failure to keep and perform any of the conditions of the bond to the best of his ability may recover thereon for their or his use by suit in the name of the people of the State of Illinois. And every assessor, deputy assessor or supervisor of assessments shall, also, before entering upon the duties of his office, take and subscribe to an oath, which oath shall also be filed in the office of the county clerk: *Provided*, that the oath of township assessors and their deputies shall be filed with their respective town clerks. Said oath to be as follows:

I do solemnly swear (or affirm) that I will support the constitution of the United States and the constitution of the State of Illinois, and that I will faithfully discharge all the duties of the office of assessor, deputy assessor or supervisor of assessments (as the case may be) to the best of my ability; that I will without fear or favor appraise all the property in said county at its fair cash value, said value to be ascertained at what the property will bring at a voluntary sale in the due course of business and trade, and that I will assess said property when so appraised at one-fifth of its said cash value; that I will cause every person, company or corporation assessed to sign his, her or its assessment schedule, and I will administer to each and every person so signing said assessment schedule the oath thereon, and return

(1) *Burton Stock Car Co. v. Treager*, Colr., 187 Ill., 9.

said schedule so signed and file the same with the county clerk.

305. Assessor, etc.—Penalty for neglect of duty.] § 5. Any assessor or deputy assessor or supervisor of assessments or other persons, whose duty it is to assess property for taxation or equalize any such assessment, who shall refuse or knowingly neglect to perform any duty required of him by law, or who shall consent to or connive at any evasion of the provisions of this Act, whereby any property required to be assessed shall be unlawfully exempted in whole or in part or the valuation thereof entered or set down at more or less than is required by law, shall, upon conviction, be fined for each offense not less than one hundred dollars nor more than five thousand dollars and imprisoned in the county jail not exceeding one year, and shall also be liable upon his bond to the party injured for all damages sustained by such party, as above provided.

306. Board of assessors may appoint deputies—Term of office—Fees—Oaths—Maps.] § 6. The board of assessors shall have power to appoint as many suitable persons as in their judgment are necessary to act as deputies, subject to the approval of the board of review as to the number and time of service of such deputies to assist them in making the assessment, who shall perform such duties as may be assigned to them by the board of assessors. They shall hold their office during the will of the board of assessors, and shall receive such compensation as shall be determined by the board, not exceeding five dollars (\$5.00) per day: *Provided*, that the assessors and deputy assessors of counties of one hundred and twenty-five thousand inhabitants or over shall be paid for their services out of the county treasury. Such deputy assessors shall, before entering upon their duties, take and subscribe the oath or affirmation prescribed for the assessors.

The board of assessors shall have power and authority to make and purchase such maps and plats as will facilitate the business of their office, which maps and plats shall always be and remain in their office, and shall be open and accessible to the public. [As amended by Act approved and in force April 24, 1899. Laws 1899, p. 335.]

307. Property subject to assessment and taxation.] § 7. All property in this State shall be subject to assessment and taxation as provided by the general laws for the assessment of property and for the levy and collection of taxes, except such property as may be exempt therefrom by such general laws. Such property shall be listed and valued in the manner and by the persons heretofore provided by law except as herein otherwise expressly provided.

308. Property to be listed April 1—How and by whom listed.] § 8. All property subject to taxation shall be listed by the person at the place and in the manner required by law, and assessed at the place and in the manner required by law with reference to the ownership, amount, kind and value on the first day of April in the year for which the property is required to be listed including all property purchased on that day. The owner of property on the first day of April in any year shall be liable for the taxes on that year.

The purchaser of property on the first day of April shall be considered as the owner on that day.

309. Real property—When and how listed and assessed.] § 9. All real property subject to taxation under the general revenue laws of the State, including real estate becoming taxable for the first time, shall be listed in the name of the owner thereof by such owners, or persons required by law, or their agents, or the officers provided by law, and assessed for the year one thousand eight hundred and ninety-nine (1899), and every fourth year thereafter, with reference to the amount owned on the first day of April in the year in which the same is assessed, including all property purchased on that day, which assessment shall be known as the general assessment, and as modified or equalized or changed as provided by law, shall be the assessment upon which taxes shall be levied and extended during the quadrennial period for which the same is made: *Provided*, that no assessment of real property shall be considered as illegal by reason of the same not being listed or assessed in the name of the owner or owners thereof.

310. County clerk to make up duplicate books of lands or lots to be assessed for taxes—When made in triplicate.] § 10. The county clerk shall, before the first day of April in the year nineteen hundred and seven (1907), and every fourth year thereafter, make up in books, to be provided for that purpose, a list of lands and lots to be assessed for taxes in the manner provided in the general revenue law. He shall also annually after the adoption of this Act before the first day of April make a list of lands and lots which are taxable, or which shall become taxable for the first time, and which are not already listed, and a list of lands and lots which have been subdivided and not listed by the proper description. Such lists shall be made up in the manner in which the county clerk is required by the general revenue law to make such lists: [*Provided*, that in counties of 125,000 inhabitants, or over, said books shall be made

in triplicate.] [As amended by Act approved May 18, 1905. In force July 1, 1905. Laws 1905, p. 360.]

311. Assessors to receive books and blanks on or before April 1.] § 11. It shall be the duty of the county assessor, the board of assessors, or the supervisor of assessments, as the case may be, to call upon the county clerk on or before the first day of April in each year and receive the assessment books and blanks as prepared by said county clerk for the assessment of property for that year.

312. When the assessor shall assess property—Mode of assessment—Actual view.] § 12. The assessor shall, before the first day of June in the year 1899 and every fourth year thereafter, in person or by his deputy, actually view and determine as near as practicable the value of each tract or lot of land listed for taxation as of the first day of April of each year, and assess the same at the value required by law, setting down the sum in proper columns prepared therefor in duplicate books furnished him. In making such assessments he shall set down his valuation of improved tracts and lots in one column, and his value of unimproved tracts and lots in another column. He shall, also, between the first day of April and the first day of June in each intervening year, list and assess in like manner all real property which shall become taxable and which is not upon the general assessment, and also make and return a list of all new or added buildings, structures or other improvements of any kind, the value of which shall not have been previously added to or included in the valuation of the tract or lot on which such improvements have been erected or placed, specifying the tract or lot on which each of said improvements has been erected or placed, the kind of improvement and the value which, in his opinion, has been added to such tract or lot by the erection thereof; and in case of the destruction or injury by fire, flood, cyclone, storm or otherwise, or removal of any structures of any kind, or of the destruction of or any injury to orchard, timber, ornamental trees or groves, the value of which shall have been included in any former valuation of the tract or lot on which the same stood, the assessor shall determine as near as practicable how much the value of such tract or lot has been diminished in consequence of such destruction or injury, and make return thereof. And in case any assessor shall fail or neglect so to do, then the supervisor of assessments shall, in the case of such new or added improvements, assess the same according to the assessment of the same property in the general assessment, and in the case of such destruction shall abate from the assessment of the tracts or lots so damaged or lessened the proper propor-

tion thereof, estimated according to the same principles; in counties containing one hundred and twenty-five thousand or more inhabitants such books shall be made up by townships.

313. Lists—When valuations and entries to be made in duplicate and when in triplicate books—Alteration—Subdivision.] § 13. All such lists, valuations and entries shall in counties of 125,000 inhabitants or over be made in triplicate assessment books; in all other counties in duplicate books. The assessor shall, also, from time to time, make such alterations in the description of real property as he may find necessary, and when real property has been subdivided since the making of the general assessment, shall from time to time correct the descriptions so that they shall correspond to the subdivisions, and distribute the assessment in the proper proportions among the lots or parcels into which the land shall have been subdivided; and in case of a vacation of a subdivision readjust the description of the assessment accordingly. [As amended by Act approved May 18, 1905. In force July 1, 1905. Laws 1905, p. 360.]

314. When lands change in value.] § 14. On or before the first day of June in each year, other than the year of the quadrennial assessment, the assessor shall determine the amount, in his opinion, of any change in the value of any tracts or lots of land by reason of any injury to, alteration in or addition to, the improvements thereon since the first of April in the preceding year and prior to the first of April in the current year, and add to or deduct from the assessment accordingly, setting down the amount of such change in a proper column in the assessment books. The value of lands and improvements shall be separately fixed, and shall in any assessment made hereafter be set down in separate columns in said assessor's books. The assessors shall not in any year, except the year of the quadrennial assessment, change the valuation of any real estate or improvements or the division thereof, except as above provided in this section: *Provided, however,* that if at any time before judgment or order of sale therefor the said assessors shall discover an error or mistake (other than errors of judgment as to the valuation of any real or personal property) in any assessment of any property belonging to any person or corporation, they shall issue to the person or corporation erroneously assessed a certificate setting forth the nature of such error and the cause or causes which operated to produce the same, which said certificate, when properly endorsed by the majority of board of review, showing their concurrence therein, and not otherwise, may be used in evidence in any court of competent jurisdiction, and when so introduced

in evidence such certificate shall become a part of the court record and shall not be removed from the files except on an order of the court. [As amended by Act approved May 18, 1905. In force July 1, 1905. Laws 1905, p. 360.]

315. Personal property—When and how valued.] § 15. Personal property shall be valued as and in the manner required by law, and shall be listed between the first day of April and the first day of June of each year when required by the assessor, with reference to the quantity held or owned on the first day of April in the year for which the property is required to be listed. Personal property purchased or acquired on the first day of April shall be listed by or for the person purchasing or acquiring it.

316. When and how personal property to be listed.] § 16. The assessor or his deputy shall annually, between the first day of April and June, list the taxable personal property in his county, town or district, and assess the value thereof as of the first day of April, in the manner following, to-wit: He shall call at the office, place of doing business or residence of each person required by this act to list property and list his name, and shall require such person to make a correct statement of the taxable property in accordance with the provisions of this Act, and the person listing the property shall enter a true and correct statement of such property owned by him on the first day of April of that year, in the form prescribed by law, which shall be signed and sworn to to the extent required by this Act by the person listing the property, who shall deliver such statement to the assessor; and the assessor shall thereupon assess the value of such property, and enter the valuation in his books: *Provided*, if any property is listed or assessed on or after the first day of June, the same shall be as legal and binding as if listed and assessed before that time.

317. To furnish printed blank schedule—Assessed value.] § 17. The assessor shall furnish to each person required to list personal property a printed blank schedule, forms to be furnished by the auditor of public accounts, upon which shall be printed a notice substantially as follows:

"This schedule must be filled out, sworn to and returned to me in person or by mail at ——(address)——on or before——. You are to give a full, fair cash value of the articles mentioned as well as the amount of money required to be returned. Only one-third of the several amounts will be taken and assessed for the purpose of taxation. (Signature)——,
"Assessor."

There shall also be printed upon such blank the schedule now required by law, and the following, which is a part of this section:

And every person required to list personal property or money shall fill out, subscribe and swear to, and return to the assessor, in person or by mail, at the time required, such schedule in accordance with law, giving the numbers, amounts, quantity and quality of all the articles enumerated in said schedule by him possessed or under his control, required to be listed by him for taxation. The assessor shall determine and fix the fair cash value of all items of personal property, including all grain on hand on the first day of April, and set down the same, as well as the amounts of notes, accounts, bonds and moneys, in a column headed "full value," and ascertain and assess the same at one-third part thereof, and set down said one-third part thereof in a column headed "assessed value," which last amount shall be the assessed value thereof for all purposes of taxation. The assessor, or some person authorized by law to administer an oath, shall administer the oath required in this section. [As amended by Act approved June 12, 1909. In force July 1, 1909. Laws 1909, p. 308.]

318. How real and personal property shall be valued—State board of equalization.] § 18. Personal property shall be valued at its fair cash value, less such deductions as may be allowed by law to be made from credits, which value shall be set down in one column, to be headed "full value," and one-third part thereof shall be ascertained and set down in another column which shall be headed "assessed value."

Real property shall be valued at its fair cash value, estimated at the price it would bring at a fair voluntary sale in the course of trade, which shall be set down in one column, to be headed "full value," and one-third part thereof shall be set down in another column, which shall be headed "assessed value."

The State Board of Equalization in valuing property assessed by them shall ascertain and determine respectively the fair cash value of such property, which fair cash value shall be set down in one column to be headed "full value," and one-third part thereof shall be ascertained and set down in another column, which shall be headed "assessed value."

The one-third value of all property so ascertained and set down shall be the assessed value for all purposes of taxation, limitation of taxation and limitation of indebtedness prescribed in the constitution or any statute. [As amended by Act approved June 12, 1909. In force July 1, 1909. Laws 1909, p. 309.]

319. Schedule—Penalty for omission to make.] § 19. The assessor shall require every person to make, sign, and swear to the schedule provided for by this Act. If any person shall re-

fuse to make the schedule herein required, or to subscribe and swear to the same, the assessor shall list the property of such person according to his best knowledge, information and judgment, at its fair cash value, and shall add to the valuation of such list an amount equal to fifty per cent of such valuation. Whoever in making such schedule shall wilfully swear falsely in any material matter shall be guilty of perjury and punished accordingly.

320. Person refusing to sign and swear to schedule—Duty of assessor—Penalty.] § 20. The assessor, deputy assessor, or some other person duly authorized by law to administer oaths, shall administer the oath or affirmation attached to the assessment schedule as provided by law, to each person or proper officer of corporation so assessed, and such person or officer of such corporation shall be required to sign said assessment schedule and swear to the same, and in case any one refuses so to do, the assessor shall note the fact in the column of remarks opposite such person's name; and any assessor failing to have said assessment schedule so signed by the person assessed and an oath administered as required by law, or failing to make such note that the person or proper officer of the corporation refuses so to do, shall for each offence be fined not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000).

321. Township assessor—Return of assessment books—Affidavit.] § 21. The township assessor shall, on or before the first day of June, for the year for which the assessment is made, return the assessment books to the county supervisor of assessments. Each of said books shall be verified by affidavit of the assessor substantially as follows:

State of Illinois, }
County of _____, } ss.

"I do solemnly swear that the book or books, _____ in number [*as the case may be*], to which this affidavit is attached, contains a full and complete list of all of the real and personal property in the township or assessment district herein described subject to taxation for the year _____ so far as I have been able to ascertain the same, and that the assessed value set down in the proper column opposite the several kinds and descriptions of property is a just and equal assessment of such property according to law.

322. Authority of supervisor of assessments.] § 22. The supervisor of assessments of the county shall have the same authority as the township assessor to assess, make changes or alterations in the assessment of property.

323. In counties having a board of assessors—Revision of assessment.] § 23. In counties having a board of assessors such board shall meet on the first Monday of June in each year for the purpose of revising the assessment of real property, and on

the third Monday of June of each year for the purpose of revising the assessment of personal property. At such meeting the board of assessors, upon application of any taxpayer or upon their own motion, shall revise the assessment and correct the same as shall appear to them to be just. Such meeting may be adjourned from day to day, as may be necessary, and the board shall finish such revision upon or before the first day of July. When such revision is completed and the change and revisions entered in the assessment books, an affidavit shall be appended to each of such assessment books, in the form required by law, signed by at least two of such assessors. Upon the signing of such affidavits the board of assessors shall have no further power to change the assessment or alter the assessment books so as to change or affect the taxes of that year.

324. Term of township assessor, etc.] § 24. The township assessor elected and qualified at the township election last preceding the date on which this Act shall take effect, or in case of any vacancies in such offices, the persons appointed to fill such vacancies shall hold their offices and perform all the duties thereof until January next following the date of the election of their successor, and thereafter their successors shall enter upon their duties on the first day of January next following their election, and perform the duties of said office for one year or until their successors are elected and qualified.

325. Office of Board of Assessors to be kept open during business hours—To furnish information to Board of Review, etc.] § 25. The office of the board of assessors, the county supervisor of assessments and the county assessor shall be open all the year during business hours to hear or receive complaints or suggestions, that real property has not been assessed at proper valuation. The supervisor of assessments, county assessor, or board of assessors, as the case may be, shall furnish to the board of review all books, papers and information in his or their office that said board may call for to assist them in the proper discharge of their duties.

326. Changes and alterations in assessment.] § 26. The supervisor of assessments shall assess, make such changes or alterations in the assessment of property as though originally made, and in making such changes in valuation as returned by the township assessor such changes shall be noted in a column provided therefor, and no change shall be made in the original figures.

All changes and alterations in the assessment of real property shall be subject to revision by the board of review in the same manner that original assessments are reviewed.

327. **Person entitled to copy of the description, schedule, etc.]** § 27. The supervisor of assessments, or in counties having a board of assessors, the chief clerk when requested, shall deliver to any person a copy of the description, schedule, return, or statement of property assessed in his name or in which he is interested, and the valuation placed thereon by the assessor or the board of review.

328. **Schedules and statements of personal property—Custody of.]** § 28. The board of assessors and the supervisor of assessments shall deliver all schedules and statements of personal property which have been received or made up by him or them to the board of review when required by them in the performance of their duties. Such schedules, after the assessment is fully completed, shall be returned to the supervisor of assessments or board of assessors and shall be preserved for at least two years.

329. **Assessment lists to be published—Board of Review.]** § 29. As soon as the county assessor or supervisor of assessments shall have completed the assessment in the year A. D. 1907, he shall cause to be published a full and complete list of such assessment by township or assessment districts, which publication shall be made on or before July 10 of each year in some public newspaper or newspapers published in said county: *Provided*, that in every township or assessment district in which there is published one or more newspapers of general circulation the list of such township or assessment district shall be published in one of said newspapers so published in said township or assessment district: *And, provided*, that said newspaper shall not receive for the publishing of said assessment list to exceed three (3) cents per name for each person or corporation so assessed, and if impossible to secure publication at that price, that the publication be let to the lowest bidder at a price not exceeding five cents per tract, and shall furnish to the county assessor, the county supervisor of assessments and the board of review as many copies of said paper containing the assessment list as they may require, said papers so furnished not to cost to exceed five (5) cents per copy: *Provided, further*, that after the year 1907, the publication shall only be of the assessment of personal property and the changes made, if any, in real estate, but the real estate assessment shall be published in full every four (4) years, beginning with the year 1907: *Provided, further*, that in counties of 125,000 inhabitants or over, no assessment of real estate shall be published as herein provided until such assessment shall have been equalized, revised or affirmed by the board

of review, and when the board of review shall have acted upon the assessment list of real property, as herein provided in the year 1907, and every four years thereafter, the assessors and board of review shall cause to be published a full and complete list of such assessment on real property, together with all changes made by the board of review under the authority of this Act, such changes to be indicated in a separate column, such publication to be in pamphlet form by election districts in lieu of publication in a newspaper: *And, provided*, that the board of review shall cause to be mailed to each taxpayer in said election precinct a copy of the said list for his precinct: *Provided, further*, that in case said assessment is not published in conformity with law and was not mailed in accordance with the provisions of this Act, the failure to so publish the same or mail the same shall not be considered as a valid objection to a judgment for tax sale in the county court. The expense of such printing and publication shall be paid out of the county treasury. [Approved and in force May 24, 1907. Laws 1907, p. 499.]

330. Board of Review—Appointment of—Vacancy—How filled—Compensation—Clerk.] § 30. In counties under township organization of less than 125,000 inhabitants, the chairman of the board of supervisors and two (2) citizens of said county, to be appointed by the county judge, on or before June 1st of each year, shall constitute the board of review to review the assessments made by the county supervisor of assessments, one of said citizens shall be appointed by said county judge from each of the political parties polling the highest vote at the general election next preceding such appointment. In case of a vacancy in such board, then the county judge may appoint a citizen of such county to fill such vacancy until such time as said office can be filled by the officer herein named. The chairman of the county board shall be the chairman of the board of review. The members of the board of review shall receive as compensation the sum per day for each day of service as shall be fixed by the county board; their time of service to be made out in due form, with day and date, and sworn to by the members thereof: *Providing, further*, that in counties of less than 125,000 inhabitants, the members of the board of review by a majority vote may select some suitable person to act as clerk of said board of review, and such clerk shall receive as compensation the sum per day for each day of service as shall be fixed by the county board; the time of services of such clerk to be made out in due form, with day and date, and sworn to by such clerk. [As amended by Act approved May 13, 1907. In force July 1, 1907. Laws 1907, p. 497.]

331. Who to constitute the board—Powers of.] § 31. In counties not under township organization the board of county commissioners shall constitute the board of review. All powers and duties conferred or required by this Act which apply to boards of review in counties under township organization of less than 125,000 inhabitants shall apply to boards of review of counties not under township organization. They shall receive the same compensation as now allowed them by law as county commissioners. The county assessor of such counties shall have the same powers and duties, so far as the same are applicable, as are conferred by this Act upon county supervisors of assessments in counties under township organization.

332. In counties of 125,000—Board of Review of three persons—Election of—Organization and duties of.] § 32. In counties containing 125,000 or more inhabitants there shall be elected at the regular county election in the year 1898 a board of review consisting of three persons, whose term of office shall commence on the first day of January next following and shall be two, four and six years respectively and until their successors shall be elected and shall qualify. At every regular county election occurring thereafter, there shall be elected a member of the board of review to succeed the one whose term shall expire that year, and whose term of office shall be six years and until his successor shall be elected and shall qualify. The persons so elected shall qualify within ten days after the canvass of the vote shall be completed. They shall hold no other lucrative public office or public employment. Each member before entering upon the duties of his office shall take and subscribe the oath provided for by law. At the first meeting of the board of review they shall determine by lot which of the members thereof shall hold office for the respective terms. Each member shall receive as compensation such sum as may be fixed by the county board, to be paid out of the county treasury. In case of any vacancy in said board or the failure of any person elected to that office to qualify, the judge of the county court shall appoint a person to fill such vacancy until his successor shall be elected and shall qualify, the member having the shortest term to serve shall be the chairman of such board.

333. Form of oath to be taken.] § 33. Each member of the board of review created by this Act shall, before entering upon the duties of his office, take and subscribe to the following oath:

I do most solemnly swear (or affirm) that I will, as a member of the board of review of assessments, faithfully perform all the duties of said office as required by law; that I will fairly and impartially review the assessment of all property as made, that I

will correct any and all assessments which should be corrected; that I will raise said assessment or lower the same as justice may require; that I will do and perform all acts necessary to procure a full, fair and impartial assessment of all property of every kind, nature and description.

334. Meeting of Board to revise assessment—Powers and duties of.] § 34. The board of review shall meet on or before the third Monday in June in each year, for the purpose of revising the assessment of property. At such meeting the board of review, upon application of any taxpayer or upon their own motion, may revise the entire assessment or any part thereof of any taxpayer, and correct the same as shall appear to them to be just, but in none of the cases provided for in this Act shall the assessment of the property of any person be increased unless such person or his agent, if either be a resident or has a place of business in the county, shall first have been notified in writing and been given an opportunity to be heard. Such meeting may be adjourned from day to day as may be necessary. *Provided*, that the final adjournment of said board of review shall be on or before the seventh day of September and that no *per diem* compensation shall be paid any member of said board for services rendered after the date fixed for the final adjournment. [As amended by Act approved June 4, 1907. In force July 1, 1907. Laws 1907, p. 496.]

335. Powers and duties of board of review.] § 35. The board of review shall in any year, whether the year of the quadrennial assessment or not:

First—Assess all property subject to assessment which shall not have been assessed by the assessors and the board may make such alterations in the description of real or personal property as it shall deem necessary.

Second—On complaint in writing that any property described in such complaint is incorrectly assessed, the board shall review the assessment, and correct the same, as shall appear to be just. Such complaint to affect the assessment for the current year shall be filed on or before the first day of August: *Provided*, that if the assessment books containing the assessment complained of are not filed with the board of review by the twentieth day of July then such complaint shall be filed on or before ten days thereafter. The board may also, of its own motion, at any time before its revision of the assessments is completed in every year, increase, reduce or otherwise adjust the assessment of any individual or corporation, on real property or personality, making changes in the valuations thereof as may be just, and shall have full power over the assessment of any in-

dividual or corporation, and may do anything in regard thereto that it may deem necessary to make a just assessment; but no assessment shall be increased until the person or corporation to be affected shall have been notified, and given an opportunity to be heard, except as hereinafter provided; and before making any reduction in assessments of its own motion the board of review shall give notice to the board of assessors which certified the assessment, and give such assessors an opportunity to be heard thereon. All complaints of errors in assessments, real or personal, shall be in writing, and shall be filed by the complaining party with said board of review, in duplicate, and the duplicate shall be forthwith filed by the board of review with the board of assessors certifying such assessment. Complaints relating to real estate shall be classified by towns by the clerk of said board of review, and complaints relating to personal property shall be classified in such manner as the board of review shall determine, by order for that purpose, duly entered of record; all classes of complaints to be docketed numerically, each in its own class, in the order in which they shall be presented, as near as may be, in books kept for that purpose, which books shall always be open to public inspection. Complaints relating to real estate shall be considered by towns, and complaints relating to personal property shall be heard in their order by classes, in pursuance of the order of the board heretofore mentioned, until all complaints have been heard and passed upon by the board.

In counties of 125,000 inhabitants, or over, in each year the assessment list of real estate, as made by the board of assessors, shall be prepared in triplicate, and the three complete lists shall be certified by the assessors to the board of review when the assessment required by law is completed by them. In revising assessments in any year the board of review shall note all changes it shall make in the valuations of real estate on all of said assessment lists, and shall duly make return of one complete list to the county clerk, as required by law, and one to the board of assessors and retain the other. On the books so retained it shall note all changes made by it in the valuation of property after that date, upon the hearings provided for in this Act. And in making its annual return each year to the county clerk, and to the assessor, as herein provided, it shall enter therein all such changes.

In other counties the assessment list of real estate as made by the board of assessors or supervisor of assessments, shall be delivered, when complete, to the board of review and after the revision thereof has been completed by the board of review, and changes noted thereon, the same shall be duly returned to the county clerk, as required by law.

After making its annual return of the revised assessment to

the board of review, as required by law, the board of assessors in counties of 125,000 inhabitants, or over, shall have the power, in any year except the last year preceding each quadrennial assessment, to consider and correct the valuations of real property for the next succeeding annual assessment, in the same manner, upon complaints filed from time to time, and upon complaint filed shall proceed to do so; and such changes as it shall make in any such valuations shall be noted upon the assessment list remaining in its custody, and include the same in its annual return to the county clerk and the board of review. All such changes to be reviewed by the board of review each year as in the cases of any assessments.

For the purpose of hearing and determining complaints of errors in the valuation of real property for the next succeeding assessment thereof, and correcting the valuations of any such property as shall be just, after its annual return has been made, as herein provided, the board of review shall, on the first Tuesday of November and the first Tuesday of each month thereafter until and including the first Tuesday of March in each year (except the year last preceding the quadrennial assessment) and at such other times as it may be necessary, hold public sessions at its board rooms, and continue such sessions from day to day, until all complaints and other business have been disposed of. Complaints passed or undisposed of at any session shall be first considered at the next succeeding monthly session, and passed complaints shall be disposed of at each session before later complaints shall be considered. Upon any hearing of a complaint, or on a proposal for any increase originating with said board, where notice is required as herein provided, the said board shall sit together, and hear the representations of the parties interested or their representatives, and no change shall be made in any assessment of real property unless at least a majority of said board shall concur therein; and in such case an order therefor shall be made in open session, and entered of record on the books of the board: *Provided*, that in counties of less than 125,000 inhabitants monthly sessions of the board of review shall not be required.

Third—Increase or reduce the entire assessment of either real or personal property, or both, or of any class included therein, if in their opinion the assessment has not been made upon the proper basis, or equalize the assessment of real or personal property by increasing or reducing the amount thereof, in any township, or part thereof, or any portion of the county, as may, in their opinion, be just, but the assessment of any class of property, or of any township, or part thereof, or any portion of

the county shall not be increased until the board shall have notified not less than fifty of the owners of property in such township, or part thereof, or portion of the county of such proposed increase and given them, or any one representing them, or other citizens of said territory, an opportunity to be heard. The board of assessors shall have like notice of any proposed increase or reduction, with an opportunity to be heard thereon, except where such action is taken in individual cases upon complaint. The board shall hear any person, upon request, in opposition to a proposed reduction in the assessment of any person, corporation or territory.

Fourth—Hear and determine the application of any person who is assessed on property claimed to be exempt from taxation. If the board shall determine that any such property is not liable to taxation, and the question as to the liability of such property to taxation has not previously been judiciously determined, the decision of said board shall not be final unless approved by the auditor of public accounts; and it shall be the duty of the clerk of the board, in all such cases, under the direction of the board, to make out and forward to the auditor a full and complete statement of all the facts in the case. If the auditor is satisfied that such property is not legally liable to taxation, he shall notify the board of review of his approval of its decision, and the board shall correct the assessment accordingly. But if the auditor is satisfied that such property is liable to taxation, he shall advise the board of his objection to its decision and give notice to said board that he will apply to the Supreme Court, specifying to what term thereof, for an order to set aside and annul the decision of the board of review. Upon receipt of such notice the clerk shall notify the person making the application aforesaid. It shall be the duty of the auditor to then file in the Supreme Court a certified statement of the facts certified by the clerk as aforesaid, together with his objections thereto, and the court shall hear and determine the matter as the right of the case may be. If the board of review shall decide that property so claimed to be exempt is liable to be taxed, and the party aggrieved at the time shall pray an appeal, a brief statement of the facts in the case shall be made by the clerk under the direction of the board, and transmitted to the auditor, who shall present the case to the Supreme Court in like manner as hereinbefore provided. In either case, the collection of the tax shall not be delayed thereby, but in case the property is decided to be exempt, the tax shall be abated and refunded.

Fifth—They shall, at any time before judgment, if an error or mistake is discovered (other than errors of judgment as to the valuation of any real or personal property), in an assessment

of any real or personal property belonging to any person or corporation, issue a certificate setting forth the nature of such error, and the cause or causes which operated to produce such error or mistake to the person or corporation erroneously assessed, which said certificate, when properly endorsed by the board of assessors, showing their concurrence therein, and not otherwise, may be used in evidence in any court of competent jurisdiction, and when so introduced in evidence such certificate shall become a part of the court records, and shall not be removed from the files except upon the order of the court.

The term “quadrennial assessment” as used in this Act shall be taken to mean the general assessment of real estate and improvements required by law to be made once in four years. [As amended by Act approved May 18, 1905. In force July 1, 1905. Laws 1905, p. 360.]

336. Notices under this Act—How given.] § 36. All notices in this Act required to be given shall be written or printed notices and shall be served personally upon the persons entitled to notice, or their agents, or by sending such notice by mail to the person so entitled to notice, or to his agent, if the residence or business address of such person is known, or by reasonable effort can be ascertained. If the address of such person can not be ascertained, then the notice shall be sent to the address of the person who last paid the taxes upon the property in question. A failure to give any notice required by this Act shall not impair or affect the validity of any assessment as finally made.

337. Board of review—When and how changes made upon assessment books.] § 37. Whenever the board of review shall decide to reverse or modify the action of the supervisor of assessments or board of assessors, or county assessor, or the assessment in any case, or to change the list as completed, or the assessment or description of any property in any manner, they shall cause the changes to be made at once and entered upon the assessment books.

338.—Form of affidavit to be attached to each of the assessment books.] § 38. The board of review shall, on or before the 7th day of September annually, complete its work and make or cause to be made the entries in the assessment books required to make the assessment conform to the changes made therein by the board of review, and shall attach to each of said books an affidavit signed by at least two members of such board, which affidavit shall be substantially in the following form:

We, and each of us, as a member of the Board of Review of the assessment of the county of ———, in the State of Illinois, do solemnly swear that the books ———, in number ———, to which this affidavit is attached,

contain a full and complete list of all the real and personal property in said county subject to taxation for the year ———, so far as we have been able to ascertain the same, and that the assessed value set down in the proper column opposite the several kinds and descriptions of property is, in our opinion, a just and equal assessment of such property for purposes of taxation according to law, and that the footings of the several columns in said book are correct, as we verily believe.

Dated ———.

Provided, that in counties containing one hundred and twenty-five thousand or more inhabitants the board of review shall also meet from time to time and whenever necessary to consider and act upon complaints and to further revise the assessments of real property as may be just and necessary. [As amended by Act approved May 18, 1907. In force July 1, 1907. Laws 1907, p. 496.]

339. Rules and regulations.] § 39. The board of assessors and the board of review shall make and publish reasonable and proper rules for the guidance of persons doing business with such board and for the orderly dispatch of business.

340. Failure to complete assessment in time not to vitiate.] § 40. A failure to complete an assessment in the time required by law shall not vitiate such assessment, but the same shall be as legal and valid as if completed in the time required by law.

341. Board of review—Meeting.] § 41. The township supervisors, township assessors and township clerks who have heretofore acted as the town boards of review in their respective townships and the county boards shall not hereafter have the power as such board of review to assess, equalize, review or revise the assessment of property. The boards of review herein provided for shall meet as soon after the taking effect of this Act as shall be practicable, not later than the third Monday in June, and shall thereupon at once enter upon the discharge of their duties. [As amended by Act approved May 18, 1907. In force July 1, 1907. Laws of 1907, p. 496.]

342. Board of review may examine assessor as to how assessment was made.] § 42. It shall be lawful for the board of review to summon any assessor or any deputy or other person to appear before them respectively to be inquired of under oath with respect to the method by which he or they has or have ascertained and fixed any valuation or valuations returned by him or them, and as to the correctness of any such valuation or valuations, and to administer and examine under oath the assessor or other person so summoned before them, and any assessor or person so summoned who shall fail, without good cause, to appear or appearing shall refuse to submit to such inquiry or answer

such questions as may be propounded to him by said board, or any member thereof, or any attorney representing them, shall be guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding five hundred dollars.

343. Delivery of books containing assessments.] § 43. When the books are so completed the board of review shall deliver one set of the books containing the assessment of real property and the books containing the assessment of personal property to the county clerk, who shall file the same in his office; one set of the books containing the assessment of real property shall be returned to the board of assessors, or supervisors of assessments; and when triplicate sets of books are required by this Act, the remaining set of books containing such assessment shall remain in the office of the board of review. All such books shall be public records and open to the inspection of all persons. The assessment so completed by the board of review and certified to the county clerk and as equalized as provided by law, shall be the assessment upon which the taxes of that year shall be extended by the county clerk. [As amended by Act approved May 18, 1905. In force July 1, 1905. Laws 1905, p. 360.]

344. Conniving at any evasion of this Act—Penalty.] § 44. Any assessor, or deputy assessor, or member of the board of review of assessments, or board of equalization, or other person whose duty it is to assess property for taxation or equalize any such assessment, who shall refuse or willfully neglect any duty required of him by law, or who shall consent to or connive at any evasion of the provisions of this Act whereby any property required to be assessed shall be unlawfully exempt in whole or in part, or the valuation thereof be set down at more or less than is required by law, shall, upon conviction, be fined for each offense not less than one hundred dollars (\$100) nor more than five thousand dollars (\$5,000), or imprisoned in the county jail not exceeding one year, or both imprisoned and fined at the discretion of the court; he shall also be liable upon his bond to the party injured for all damages sustained by such party as above provided, and shall also be removed from office by the judge of the court before whom he is tried and convicted.

345. Delivering false or fraudulent lists to assessor—Penalty.] § 45. Whoever, with intent to defeat or evade the law in relation to the assessment of property, delivers or discloses to any assessor or deputy assessor a false or fraudulent list, return or schedule of his property not exempted by law from taxation, shall be punished by fine not exceeding five thousand dollars (\$5,000) or imprisonment in the county jail not exceeding one year, or both, in the discretion of the court.

346. Duty of State's attorney to prosecute violators—Fees—Payment of salary of county assessor, etc.] § 46. It is hereby made the duty of the State's attorney of each county to prosecute all violators of this Act, and they shall receive as fees the sum of twenty dollars (\$20) for each conviction, to be taxed as costs, and ten per cent of all fines collected. The residue of all fines collected under this Act shall be paid into the county treasury for the use of the county. The salary of the county assessor, supervisor of assessments, and members of the board of assessors and board of review shall all be paid out of the county treasury on bills duly certified and approved by the county board.

347. Abstract of the assessment to be sent to auditor.] § 47. The county clerk shall annually, on or before the tenth day of September, make out and transmit to the auditor the abstract of the assessment of property required of the county clerk in section ninety-eight (98) of the Act entitled, "An Act for the assessment of property and for the levy and collection of taxes," approved March 30, 1872, as amended.

348. County collector—Duplicate delinquent lists—When to be made and where to be filed.] § 48. The county collector shall annually make out in duplicate the statement required by law, setting forth in detail the names of persons charged with personal property tax which is uncollected, and the reasons preventing such collection; and shall, also, at the same time, make out in duplicate a statement setting forth in detail the amount of taxes on real property which is uncollected, the names of the persons in whose name such property was listed, and the reasons preventing the collection of such taxes. He shall, also, at the same time, make out in duplicate a statement of all taxes collected during the year which had been returned as delinquent in any previous year, together with a description of the property upon which such taxes were levied. He shall file one of each of such duplicate statements with the county clerk and in counties of this State containing 125,000 or more inhabitants such collector shall file one of each of such duplicate statements with the county clerk and the other with the city comptroller if there shall be any such officer in any of the cities within such counties.

349. County clerk to estimate and determine rate per cent—how to be determined.] § 49. The county clerk shall estimate and determine the rate per cent upon the proper valuation of the property in the respective towns, townships, districts and incorporated cities, towns and villages in their counties that will produce, within the proper divisions of such counties, not less than

the net amount of the several sums that shall be required by the county board or certified to them according to law.

In counties containing one hundred and twenty-five thousand (125,000) or more inhabitants the amount to which any county, city, township, school district or other municipal corporation shall be allowed to become indebted in any manner or for any purpose, shall not hereafter exceed two and one-half per cent on the assessed value of the taxable property therein, to be ascertained by the last assessment for State and county taxes previous to the incurring of such indebtedness. In any municipality or taxing district in any county or counties containing a population of 125,000 or more inhabitants in which the aggregate of the levies or taxes certified to the county clerk exceeds five per cent a reduction shall be made by the county clerk in the taxes so certified, so as to reduce the aggregate of such taxes to five per cent in the manner following, viz.:

The rate of county taxes throughout the county shall be fixed by reducing the aggregate rate of taxation in the municipality or taxing district within the county in which such aggregate rate is the highest to five per cent by a *pro rata* reduction of all the levies certified therein, exclusive of the State taxes. The rate of each of the other kinds of tax levies shall be fixed in the same manner, taking the highest rate of taxation in any part of the municipality or other taxing district, or part thereof, as the basis of ascertaining the rate of taxation to be levied by such municipality or taxing district, and making the rate of taxation within the limits thereof uniform, and reducing the aggregate rate of taxation in each district in which it exceeds five per cent to five per cent.

In ascertaining the aggregate rate of taxation, and reducing the same under the foregoing provision, taxes certified or levied for school building purposes shall not be included or taken into account in any manner, or for any purpose. The limitations herein contained shall apply only to assessments of property made under the provisions of this Act.

CONCERNING THE LEVY AND EXTENSION OF TAXES.

AN ACT concerning the levy of and extension of taxes. [Approved May 9, 1901. In force July 1, 1901. Laws 1901, p. 272.]

350. Amount of tax authorized to be levied.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That in determining the amount of the maximum tax authorized to be levied by any statute of this State the assessed valuation of the current year of the property in each

taxing district, as equalized by the State board of equalization, shall be used. And if the amount of any tax certified to the county clerk for extension shall exceed the maximum allowed by law, determined as above provided, such excess shall be disregarded, and the residue only treated as the amount certified for extension.

351. Levy and extension of taxes.] § 2. The county clerk in each county shall ascertain the rates per cent required to be extended upon the assessed valuation of the taxable property in the respective towns, townships, districts, incorporated cities and villages in his county, as equalized by the State Board of Equalization for the current year, to produce the several amounts certified for extension by the taxing authorities in said county (as the same shall have been reduced as hereinbefore provided in all cases where the original amounts exceed the amount authorized by law): *Provided, however,* that if the aggregate of all the taxes (exclusive of State taxes, village taxes, levee taxes, school building taxes, high school taxes, district school taxes and all other school taxes in school districts having not more than 100,000 inhabitants, road and bridge taxes, and for a period of three (3) years beginning with the year 1913 taxes levied for the payment of the principal of and the interest on bonded indebtedness of cities, and exclusive of taxes levied pursuant to the mandate or judgment of any court of record on any bonded indebtedness), certified to be extended against any property in any part of any taxing district or municipality, shall exceed three per cent of the assessed valuation thereof upon which the taxes are required to be extended, the rate per cent of the tax levy of such taxing district or municipality shall be reduced as follows: The county clerk shall reduce the rate per cent of the tax levy of such taxing district or municipality in the same proportion in which it would be necessary to reduce the highest aggregate per cent of all the tax levies (exclusive of State taxes, village taxes, levee taxes, school building taxes, high school taxes, district school taxes and all other school taxes in school districts having not more than 100,000 inhabitants, road and bridge taxes, and for a period of three (3) years beginning with the year 1913 taxes levied for the payment of the principal of and the interest on bonded indebtedness of cities, and exclusive of taxes levied pursuant to the mandate or judgment of any court of record on any bonded indebtedness), certified for extension upon any of the taxable property in said taxing district or municipality, to bring the same down to three per cent of the assessed value of said taxable property upon which said taxes are required by law to be extended: *Provided, further,* that in reducing tax levies hereunder the rate per cent of the tax levy for county purposes in counties having a population of over 300,000 shall not be reduced below a rate of forty

cents on each one hundred dollars assessed value, and in counties having a population of less than 300,000 the rate of the tax levy for county purposes shall not be reduced below a rate of forty-five cents on each one hundred dollars assessed value, and the rate per cent of the tax levy for city or village purposes (exclusive of library, school and park purposes and for a period of three (3) years beginning with the year 1913 exclusive of the taxes levied for the payment of the principal of and the interest on bonded indebtedness) in cities and villages having a population of over 150,000 shall not be reduced below a rate of one dollar and ten cents on each one hundred dollars assessed value, and the rate per cent of the school tax for educational purposes shall not be reduced below a rate of one dollar and five cents on each one hundred dollars assessed value, and the rate per cent of the tax levy for city or village purposes (exclusive of library, school and park purposes, and exclusive of the taxes levied for the payment of the principal of and the interest on bonded indebtedness) in cities and villages having a population of less than 150,000 shall not be reduced below a rate of one dollar and twenty cents on each one hundred dollars assessed value, and the rate per cent of the school tax levy for educational purposes shall not be reduced below a rate of one dollar and fifty cents on each one hundred dollars assessed value, but the other taxes which are subject to reduction under this section shall be subject only to such reduction respectively, as would be made therein under this section if this proviso were not inserted herein: *And, provided, further*, in reducing tax levies hereunder all school taxes levied in cities exceeding 150,000 inhabitants, with the exception of the levy for school building purposes, shall be included in the taxes to be reduced.

The rate per cent of the tax levy of every county, city, village, town, township, park district, sanitary district, road district, and other public authorities (except the State), shall be ascertained and determined (and reduced when necessary as above provided), in the manner hereinbefore specified, and shall then be extended by the county clerk upon the assessed value of the property subject thereto (being one-third of the full value thereof) as equalized according to law. In reducing the rate per cent of any tax levy, as hereinbefore provided, the rates per cent of all tax levies certified to the county clerk for extension as originally ascertained and determined under section one of this Act, shall be used in ascertaining the aggregate of all taxes certified to be extended without regard to any reductions made therein under this section: *Provided*, that no reduction of any tax levy made hereunder shall diminish any amount appropriated by corporate or taxing authorities for the payment of the principal or interest on bonded debt, or levied pursuant to the mandate or judgment of any court of

record. And to that end every such taxing body shall certify to the county clerk with its tax levy, the amount thereof required for any such purposes.

In case of a reduction hereunder any taxing body whose levy is affected thereby and whose appropriations are required by law to be itemized, may, after the same have been ascertained, distribute the amount of such reduction among the items of its appropriations, with the exceptions aforesaid, as it may elect. If no such election be made within three months after the extension of such tax, all such items, except as above specified, shall be deemed to be reduced *pro rata*. [As amended by Act approved May 20, 1913. In force July 1, 1913. Laws 1913, p. 519.]

352. The State board of equalization—Time of meeting.] § 50. The State Board of Equalization shall hereafter assemble annually on the first Tuesday after the tenth day of August. The sessions of the board may be adjourned from day to day as may be necessary: *Provided*, that the final adjournment of said board shall be on or before the first day in November and that no *per diem* compensation shall be paid any member of said board for services rendered after the date fixed for the final adjournment. [As amended by Act approved May 18, 1907. In force July 1, 1907. Laws 1907, p. 495.]

353. The State board of equalization may raise or lower total assessed value.] § 51. The State board of equalization may so lower or raise the total assessed value of property in any county as returned by the county clerk as shall make the property in such county bear a just relation to the assessed value of property in other counties of the state: *Provided*, that the total amount of such decrease or increase shall not exceed ten (10) per cent of the total assessed value of all property in the state as returned for purposes of taxation.

354. When books for the collection of taxes to be delivered to collector.] § 52. The county clerk shall hereafter deliver to the town, district or county collectors the books for the collection of taxes on the second day of January following the year on which such taxes are levied. [As amended by Act approved May 13, 1907. In force July 1, 1907. Laws 1907, p. 500.]

355. A number of dates for the performance of Acts under the general revenue law changed.] § 53. All lists, schedules, returns and statements heretofore required by law to be made between the first day of May and the first day of July by the assessors or by the owner of property, or person required to list the same, shall hereafter be made between the first day of April and the first day of June of each year.

The owner of personal property removing from one county, town, city, village or district to another between the first day of April and the first day of June shall be assessed in either in which he is first called upon by the assessor. The owner of personal property moving into this State from another State between the first day of April and the first day of June shall list the property owned by him on the first day of April in such year in the county, town, city, village or district in which he resides. *Provided*, if such person has been and can make it appear to the assessor that he is held for tax of the current year on the property in another state, county, town, city, village or district he shall not be again assessed for said year.

All dates and times for the doing or performing of any act or thing which prior to the taking effect of this Act were fixed by law with reference to the assessment of taxes between the first day of May and the first day of July, or the state board of equalization meeting, on the second Tuesday of August, or the collectors' warrants being returned to the collectors on the 20th day of December are respectively changed so that such acts or things shall be done or performed in the manner required by law with reference to the respective dates fixed by this Act for the assessment of taxes, meeting of the State Board of Equalization, or the delivery of the collector's warrants to the collector.

Taxes upon real property with penalties, interest and costs, that shall accrue thereon, shall be a prior and first lien on such real property from and including the first day of April in the year in which the taxes are levied instead of the first day of May as heretofore with all the rights and incidents relating to such lien, which now are or hereafter may be provided by law: *Provided*, nothing in this section contained shall change or affect any rights or liabilities under any contract entered into before the taking effect of this Act.

The abstracts which the auditor prior to the taking effect of this Act was required by law to obtain on the first day of May from the United States land office in this state of lands entered and located, and from the Illinois Central railroad and canal offices of lands sold shall hereafter be obtained by him on the first day of April in each year, or as soon thereafter as practicable. and the annual reports heretofore required by law to be made by the county clerk to the auditor, of swamp and overflowed lands sold for the year ending on the first day of May shall hereafter be made for the year ending on the first day of April.

356. Board of assessors—Duties and powers of—Penalties.]
§ 54. The board of assessors shall perform the duties and have

the powers in relation to the assessment of property imposed upon or possessed by county or township assessors by law, and where the term assessors is used in this act it shall apply to such board of assessors and the members thereof, except in so far and in such cases as it is inconsistent with special provisions of this Act in regard to the board of assessors and the members thereof, and the members of such board of assessors shall be subject to all the liabilities and penalties imposed upon assessors by this Act.

357. Provisions of the general revenue Act applicable—To remain in force.] § 55. All of the provisions of the general revenue law in force prior to the taking effect of this Act shall remain in force and be applicable to the assessment of property and collection of taxes except in so far as by this Act is otherwise expressly provided.

358. Majority of board may act.] § 56. Wherever, in this Act, the board of assessors or the board of review is authorized to act, such action may be taken by a majority of said respective boards.

359. In counties of 125,000 or over—Power of township assessor.] § 57. In counties of one hundred and twenty-five thousand inhabitants or over the township assessors shall not have the power or duty of assessing property, except as otherwise provided in this Act, but shall perform all other duties imposed upon them by law.

360. Provision in case any county shall hereafter come under the provisions of this Act.] § 58. In case any county not now coming under the provisions of this Act shall hereafter contain within its limits one hundred and twenty-five thousand or more inhabitants, as determined by the last school or federal census, such county shall at once come under the provisions of this Act relating to counties of such population, and at the regular county election ensuing next after such contingency occurs, a board of five assessors and a board of review shall be elected, and all the provisions of this Act shall then immediately apply to such county.

361. Repeal.] § 59. An Act entitled "An Act to provide for the election of assessors in townships containing not less than forty thousand inhabitants in counties under township organization and fixing the compensation of such assessors," approved June 19, 1893, and in force July 1, 1893, and as amended, be, and the same is hereby repealed.

AGRICULTURAL AND OTHER STATISTICS.

AN ACT to secure the collection and publication of agricultural and other statistics. [Approved and in force May 25, 1877. Laws 1877, p. 3.]

- 362. Blanks and schedules.
- 363. Assessors to collect and return statistics.
- 364. Owners to fill schedules—Duty of assessors.
- 365. Returns—How made.
- 366. Emergency.

362. Blanks and schedules.] § 1. That it shall be the duty of the secretary of the state board of agriculture to prepare and deliver to the auditor on or before the first day of April in each year, forms of blanks and schedules similar to those used in the assessment and return of property, one or more copies of which forms the state auditor shall send by mail to the county clerks of the several counties on or before the date aforesaid for their information and guidance.

363. Assessors to collect and return statistics.] § 2. It shall be the duty of the county clerk of each of the several counties to provide schedules and blanks according to the forms provided by the auditor for the use of assessors, and it shall be the duty of assessors and deputy assessors in the same manner, and at the same time as is or may be provided by law for the assessment of property, to cause such census schedules to be filled by all persons within their respective assessment districts in possession of property concerning which information is required by this Act. Such schedule shall truly and distinctly set forth the number of acres he, she or they may have had the preceding year in fall wheat, spring wheat, corn, rye, oats, barley, buckwheat, castor beans, beans, peas, Irish potatoes, sweet potatoes, turnips and other root crops, and the number of bushels of each produced the preceding year; the number of acres in timothy grass, and the number of tons of hay and bushels of seed produced therefrom the preceding year; the number of acres in clover, and the number of tons of hay and the bushels of seed produced therefrom the preceding year; the number of acres planted in cotton, and the number of pounds of lint and the bushels of seed obtained therefrom the preceding year; the number of acres sown in flax, the number of pounds of fibre and the bushels of seed obtained therefrom the preceding year; the number of acres planted in tobacco, and the number of pounds produced therefrom the preceding year. And the secretary of the State Board of Agriculture shall have power, after the first year, to add to or omit from the foregoing schedule such items as the said State Board of Agriculture shall designate.

364. Owners to fill schedule—Duty of assessors.] § 3. It

shall be the duty of all persons owning or in possession of property concerning which information is required by this Act, to make out and deliver to the assessor at the time fixed for the listing of property for taxation a schedule as aforesaid properly and correctly filled, and it shall be the duty of said assessors or deputy assessors to properly fill and add up the blanks and schedules aforesaid and to return the same correctly footed up, to the county clerk at the same time and in the same manner as is now or may be required for the return of assessments.

365. Returns—How made.] § 4. It shall be the duty of the county clerk to revise, correct, tabulate and foot up the statistical returns made to him by the assessors or deputy assessors of organized townships in counties under township organization, and of congressional townships in counties not under township organization, and to transmit to the State Auditor with his return of the assessment of the county an abstract of the agricultural statistics of the county in the form required by the schedule and blanks furnished by the auditor; and it shall be the duty of the auditor to transfer without delay such abstracts to the secretary of the State Board of Agriculture, who shall revise, correct, and compile the same, and publish the results in the annual report of the transactions of the State Board of Agriculture for the year or years in which the statistics were collected.

366. Emergency.] § 5. It is hereby declared that an emergency exists, and therefore this Act shall be in force from and after its passage.

ASSESSMENT AND TAXATION OF BRIDGES ACROSS NAVIGABLE WATERS ON THE BORDERS OF THIS STATE.

AN ACT to provide for the assessment and taxation of bridges across navigable waters on the borders of this State. [Approved and in force May 1, 1873.]

367. Bridges on border of State—How assessed.

368. Sale of bridge, etc., for tax.

369. Repeal.

370. Emergency.

367. Bridges on border of State—How assessed.] § 1. That all bridge structures across any navigable streams forming the boundary line between the State of Illinois and any other State, shall be assessed by the township or other assessor in the county or township where the same is located, as real estate; and all provisions of law relating to the assessment and taxation of real estate, shall apply to the assessment and taxation of such bridges. Such assessor shall give in his description the quarter section, section, township and range in which such bridge is located or

terminates in this State, together with the metes and bounds of the ground occupied by such bridges, and the approaches thereto from the end on the Illinois shore to the center of the main channel of the stream crossed by the same. For the purpose of obtaining such description the assessor may employ a competent surveyor, and the expense of making such survey and description shall be charged as a tax against such property by the county clerk, on the certificate of the surveyor: Provided, that one survey of any bridge and approaches, made under this Act, shall be deemed sufficient for the purpose of subsequent assessment of such bridge or approaches.

368. Sale of bridge, etc., for tax.] § 2. In default of payment of any such tax assessed against any such bridge company, as aforesaid, such bridge structures, and approaches thereto, so far as the same are located within this state, together with the land on which the same is located, as described by the assessor, and the franchise belonging thereto, shall be sold for such tax at the same time and in the same manner as other real estate shall be sold in such county for delinquent tax; and any county, city, town, school district, or other municipal corporation, interested in the collection of the tax levied upon such bridge, may become the purchaser at such sale, or at any sale of such property under judgment recovered upon, or to enforce the collection of such tax; and if the property so sold is not redeemed, may acquire, hold, sell and dispose of the title thereto. [As amended by Act approved May 3, 1877. In force July 1, 1877. Laws 1877, p. 171.]

369. Repeal.] § 3. All Acts and parts of Acts inconsistent with this Act are hereby repealed.

370. Emergency.] § 4. *Whereas*, by existing law such bridge structures cannot be sold for delinquent taxes, so as to convey a good title thereto, wherefore an emergency exists why this Act should take effect immediately; therefore, this Act shall take effect and be in force from and after its passage.

FOR STATE PURPOSES.

AN ACT to provide for the necessary revenue for State purposes. [Approved June 27, 1913. In force July 1, 1913. Laws 1913, p. 512.]

371. Revenue Fund for General State Purposes and for State School Purposes.

372. Officers to compute rates per cent required—Auditor to certify—Repeal.

371. Revenue fund for general State purposes and for State school purposes.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That there shall be raised, by levying a tax by valuation upon the assessed taxa-

ble property of the State, the following sums for the purposes hereinafter set forth:

For general State purposes, to be designated "revenue fund," the sum of ten million, six hundred thousand dollars (\$10,600,000) upon the assessed value of the property for the year A. D. 1913; ten million, six hundred thousand dollars (\$10,600,000) upon the assessed value of property for the year A. D. 1914; and for State school purposes, to be designated "State school fund," the sum of three million dollars (\$3,000,000) upon the assessed taxable property for the year A. D. 1913, and the sum of three million dollars (\$3,000,000) upon the assessed taxable property for the year A. D. 1914, in lieu of the two mill tax.

372. Officers to compute rates per cent required—Auditor to certify—Repeal.] § 2. The Governor, the Auditor and Treasurer shall annually compute the several rates per cent. required to produce not less than the above amounts, anything in any other Act providing a different manner of ascertaining the amount of revenue required to be levied for State purposes to the contrary notwithstanding; and when so ascertained, the Auditor shall certify to the county clerk the proper rates per cent. therefor, and also such definite rates for other purposes as are now or may hereafter be provided by law, to be levied and collected as State taxes, and all other laws and parts of laws in conflict with this Act are hereby repealed.

VALIDATING ACTS OF COUNTY BOARD HERETOFORE DONE IN DETERMINING AMOUNT OF TAXES TO BE RAISED FOR COUNTY PURPOSES.

AN ACT to make legal and valid the Acts of the county board heretofore done by determining the amounts of all taxes to be raised for county purposes in their respective counties, and to make legal and valid the levy of taxes for county purposes thereunder. [Approved and in force February 28, 1905. (1)].

373. Validating Acts of county board heretofore done in determining amount of taxes to be raised for county purposes.

374. Emergency.

373. Validating Acts of county board, heretofore done in determining amount of taxes to be raised for county purposes.]
§ 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly:* That when the county board of any county heretofore in determining the amounts of all taxes to be raised for county purposes in any year, has at its September session in such year determined said amounts by naming a fixed and definite sum to be so raised without naming the particular or specific purposes for which said taxes, when collected, shall be appropriated, expended or raised, and when any county board heretofore in determining the amounts of all taxes

(1) Chicago and Eastern Ill. R. R. Co. v. People, 219 Ill., p. 408.

to be raised for county purposes in any year, has at its September session in such year declared or provided that a certain number of cents on each one hundred dollars of valuation of property shall be raised for county purposes, not exceeding seventy-five cents on each one hundred dollars of such valuation and without naming the particular or specific purposes for which said taxes when collected shall be appropriated, expended or raised, and when any county board heretofore in determining the amounts of all taxes to be raised for county purposes in any year, has at its September session in such year declared or provided that a certain number of cents on each one hundred dollars of valuation of property shall be raised for county purposes not exceeding seventy-five cents on the one hundred dollars of such valuation of property and has named the particular or specific purposes for which such taxes when collected shall be appropriated, expended or raised, such determination and the taxes assessed, levied or extended, shall be and are hereby declared to be legal and valid, anything in any law of this State to the contrary notwithstanding.

374. **Emergency.]** § 2. Whereas, An emergency exists, therefore this Act shall take effect and be in force from and after its passage.

GIFTS, LEGACIES AND INHERITANCES.

AN ACT to tax gifts, legacies, inheritances, transfers, appointments and interests in certain cases, and to provide for the collection of the same, and repealing certain Acts therein named. [Approved June 14, 1909. In force July 1, 1909. Laws 1909, p. 311.]

- 375. What property is subject to this Act—Rates of taxation prescribed exemptions.
- 376. Appraisement of life interest. Accrued tax a lien on entire property—Bond for deferred payment.
- 377. Interest on deferred payment of tax assessed—Bond of executors and others.
- 378. Duties of executors and administrators.
- 379. Liability of executors and others.
- 380. Payment of tax—how made by executors and others—Receipt of State treasurer.
- 381. Executor and others to give information to county treasurer.
- 382. Refunding tax retained by executor and others.
- 383. Foreign executor transferring stocks—Notice to treasurer and attorney general—Liability of custodians.
- 384. Refunding excess of tax by State treasurer.
- 385. Appraisement of property—how made.
- 386. Fees of county clerks—Inheritance tax attorney—appointment authorized—salary—Fees generally.
- 387. Appraiser—penalty for receiving fee or reward.
- 388. Jurisdiction of county court over property of new resident decedent.
- 389. Failure to pay tax—Proceedings in county court.
- 390. State's attorney to enforce payment—Fees allowed.

- 391. County judge and county clerk—quarterly statements to county treasurer.
- 392. Allowance of expenses by State treasurer.
- 393. State treasurer shall furnish book to county judge.
- 394. Payment by county to State treasurer—receipt—report to auditor semi-annually.
- 395. Fees of county treasurer.
- 396. Receipt from county treasurer—sealing and recording same.
- 397. Liability to taxation—how determined—appeal to supreme court.
- 398. Continuation of lien—limitation.
- 399. Highest rate in certain cases—return of tax wrongfully imposed—other provisions.
- 400. Compounding of claims—powers of State treasurer and attorney general.
- 401. Guardian for infant.
- 402. Bequests to hospitals, churches and other organizations exempted.
- 403. Transfer defined.
- 404. Certified copies of papers to be furnished—fees for same.
- 405. Repeal.

375. What property is subject to this Act.—Rates of taxation prescribed—Exemptions.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* A tax shall be and is hereby imposed upon the transfer of any property, real, personal or mixed, or of any interest therein or income therefrom, in trust or otherwise, to persons, institutions or corporations, not hereinafter exempted, in the following cases:

1. When the transfer is by will or by the intestate laws of this State, from any person dying seized or possessed of the property while a resident of the State.

2. When the transfer is by will or intestate laws of property within the State and the decedent was a non-resident of the State at the time of his death.

3. When the transfer is of property made by a resident, or by a non-resident when such non-resident's property is within this State, by deed, grant, bargain, sale or gift, made in contemplation of the death of the grantor, vendor or donor, or intended to take effect in possession or enjoyment at or after such death. When any such person, institution or corporation becomes beneficially entitled in possession or expectancy to any property or the income therefrom, by any such transfer, whether made before or after the passage of this Act.

4. Whenever any person, institution or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this Act, such appointment, when made, shall be deemed a taxable transfer under the provisions of this Act, in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or

devised by such donee by will; and whenever any person or corporation possessing such a power of appointment so derived shall omit or fail to exercise the same within the time provided therefor, in whole or in part, a transfer taxable under the provisions of this Act shall be deemed to take place to the extent of such omission or failure, in the same manner as though the persons or corporations thereby becoming entitled to the possession or enjoyment of the property to which such power related had succeeded thereto by a will of the donee of the power failing to exercise such power, taking effect at the time of such omission or failure.

When the beneficial interests to any property or income therefrom shall pass to or for the use of any father, mother, husband, wife, child, brother, sister, wife or widow of the son, or the husband of the daughter, or any child or children adopted as such in conformity with the laws of the State of Illinois, or to any person to whom the deceased, for not less than ten years prior to death, stood in the acknowledged relation of a parent: *Provided, however,* such relationship began at or before said person's fifteenth birthday and was continuous for said ten years thereafter: *And, provided, also,* that the parents of such person, so standing in such relation shall be deceased when such relationship commenced, or to any lineal descendant of such decedent born in lawful wedlock. In every such case the rate of tax shall be two dollars on every one hundred dollars of the clear market value of such property received by each person, when the amount so received exceeds in amount the sum of one hundred thousand dollars, and one dollar on each one hundred dollars of the clear market value of such property received by each person when the amount so received is one hundred thousand dollars or less; and at and after the same rates, respectively, for every less amount: *Provided,* that any gift, legacy, inheritance, transfer, appointment or interest which may be valued at a less sum than twenty thousand dollars shall not be subject to any such duty or taxes, and the tax is to be levied in the above cases only upon the excess of twenty thousand dollars received by each person. When the beneficial interest to any property or income therefrom shall pass to or for the use of any uncle, aunt, niece or nephew or any lineal descendant of the same, in any such case the rate of such tax shall be four dollars on every one hundred dollars of the clear market value of such property received by each person on the excess of two thousand dollars so received by each person when the amount so received exceeds the sum of twenty thousand dollars; and two dollars on every one hundred dollars of the clear market value of such property received by each person on the excess of two thousand dollars so received by each person

when the amount so received is twenty thousand dollars or less. In all other cases the rate shall be as follows: On each and every one hundred dollars of the clear market value of all property and at the same rate for any less amount; on all transfers of ten thousand dollars and less, three dollars; on all transfers over ten thousand dollars and not exceeding twenty thousand dollars, four dollars; on all transfers over twenty thousand dollars and not exceeding fifty thousand dollars, five dollars; on all transfers over fifty thousand dollars and not exceeding one hundred thousand dollars, six dollars; and on all transfers over one hundred thousand dollars, ten dollars: *Provided*, that any gift, legacy, inheritance, transfer, appointment or interest which may be valued at a less sum than five hundred dollars shall not be subject to any duty or tax.

376. Appraisement of life interest.—Accrued tax a lien on entire property.—Bond for deferred payment.] § 2. When any property or interest therein or income therefrom shall pass or be limited for the life of another, or for a term of years, or to terminate on the expiration of a certain period the property of the decedent so passing shall be appraised immediately after the death of the decedent, and the value of the said life estate, term of years or period of limitation shall be fixed upon mortality tables, using the interest rate or income rate of five per cent; and the value of the remainder in said property so limited shall be ascertained by deducting the value of the life estate, term of years or period of limitation from the fair market value of the property so limited, and the tax on the several estate or estates, remainder or remainders, or interests shall be immediately due and payable to the treasurer of the proper county, together with interest thereon, and said tax shall accrue as provided in section 3 of this Act, and remain a lien upon the entire property limited until paid: *Provided*, that the person or persons, body politic or corporate, beneficially interested in property chargeable with said tax, elect not to pay the same until they shall come into actual possession or enjoyment of such property, then in that case said person or persons, or body politic or corporate, shall give bond to the People of the State of Illinois in a penal sum three times the amount of the tax arising from such property, limited with such sureties as the county judge may approve, conditioned for the payment of the said tax and interest thereon at such time or period as they or their representatives may come into the actual possession or enjoyment of said property; which bond shall be filed in the office of the county clerk of the proper county: *Provided, further*, that such person or persons, body politic or corporate, shall make a full verified return of said property to

said county judge and file the same in his office within one year from the death of the decedent, with the bond and sureties as above provided; and, further, said person or persons, body politic or corporate shall renew said bond every five years after the date of the death of decedent.

377. Interest on deferred payment of tax assessed.—Bond of executors and others.] § 3. All taxes imposed by this Act, unless otherwise herein provided for, shall be due and payable at the death of the decedent, and interest at the rate of six per cent per annum shall be charged and collected thereon for such time as said taxes are not paid: *Provided*, that if said tax is paid within six months from the accruing thereof, interest shall not be charged or collected thereon, but a discount of five per cent shall be allowed and deducted from said tax; and in all cases where the executors, administrators or trustees do not pay such tax within one year from the death of the decedent, they shall be required to give a bond in the form and to the effect prescribed in section 2 of this Act, for the payment of said tax, together with interest.

378. Duties of executors and administrators.] § 4. Any administrator, executor or trustee having any charge or trust in legacies or property for distribution subject to the said tax shall deduct the tax therefrom, or if the legacy or property be not money he shall collect a tax thereon upon the appraised value thereof from the legatee or person entitled to such property, and he shall not deliver or be compelled to deliver any specific legacy or property subject to tax to any person until he shall have collected the tax thereon; and whenever any such legacy shall be charged upon or payable out of real estate the heir or devisee before the paying the same, shall deduct said tax therefrom, and pay the same to the executor, administrator or trustee, and the same shall remain a charge on such real estate until paid, and the payment thereof shall be enforced by the executor, administrator or trustee in the same manner that the said payment of said legacies might be enforced, if, however, such legacy be given in money to any person for a limited period, he shall retain the tax upon the whole amount, but if it be not in money he shall make application to the court having jurisdiction of his accounts, to make an apportionment if the case requires it of the sum to be paid into his hands by such legatees, and for such further order relative thereof as the case may require.

379. Liability of executors and others.] § 5. All executors, administrators and trustees shall be personally liable for the payment of taxes and interest, and where proceedings for collection of taxes assessed be had, said executors, administrators and

trustees shall be personally liable for the expenses, costs and fees of collection. They shall have full power to sell so much of the property of the decedent as will enable them to pay said tax, in the same manner as they may be enabled to do by law, for the payment of duties of their testators and intestates, and the amount of said tax shall be paid as hereinafter directed.

380. Payment of tax—How made by executor and others.—Receipt of State Treasurer.] § 6. Every sum of money retained by any executor, administrator or trustee, or paid into his hands for any tax on any property, shall be paid by him within thirty days thereafter to the treasurer of the proper county, and the said treasurer or treasurers shall give, and every executor, administrator or trustee shall take duplicate receipts from him of said payments, one of which receipts he shall immediately send to the State Treasurer, whose duty it shall be to charge the treasurer so receiving the tax with the amount thereof, and shall seal said receipt with the seal of his office and countersign the same and return it to the executor, administrator or trustee, whereupon it shall be a proper voucher in the settlement of his accounts; but the executor, administrator or trustee shall not be entitled to credit in his accounts or be discharged from liability for such tax unless he shall purchase a receipt so sealed and countersigned by the treasurer and a copy thereof certified by him.

381. Executor and others to give information to county treasurer.] § 7. Whenever any of the real estate of which any decedent may die seized shall pass to any body politic or corporate, or to any person or persons, or in trust for them, it shall be the duty of the executor, administrator or trustee of such decedent to give information thereof in writing to the treasurer of the county where said real estate is situated, within six months after they undertake the execution of their expected duties, or if the fact be not known to them within that period, then within one month after the same shall have come to their knowledge.

382. Refunding tax retained by executor and others.] § 8. Whenever debts shall be proved against the estate of the decedent after distribution of legacies from which the inheritance tax has been deducted in compliance with this Act, and the legatee is required to refund any portion of the legacy, a proportion of the said tax shall be repaid to him by the executor or administrator if the said tax has not been paid into the State or county treasury, or by the county treasurer if it has been so paid.

383. Foreign executor transferring stocks.—Notice to Treasurer and Attorney General—Liability of custodians.] § 9. If a foreign executor, administrator or trustee shall assign or trans-

fer any stock or obligations in this State standing in the name of a decedent or in trust for a decedent, liable to any such tax, the tax shall be paid to the treasurer of the proper county on the transfer thereof. No safe deposit company, trust company, corporation, bank or other institution, person or persons having in possession or under control securities, deposits, or other assets belonging to or standing in the names of a decedent who was a resident or non-resident or belonging to, or standing in the joint names of such a decedent and one or more persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer herein provided, shall deliver or transfer the same to the executors, administrators or legal representatives of said decedent, or the survivor or survivors when held in the joint names of a decedent and one or more persons, or upon their order or request, unless notice of the time and place of such intended delivery or transfer be served upon the State Treasurer and Attorney General at least ten days prior to said delivery or transfer; nor shall any such safe deposit company, trust company, corporation, bank or other institution, person or persons deliver or transfer any securities, deposits or other assets belonging to or standing in the name of a decedent, or belonging to, or standing in the joint names of a decedent and one or more persons, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, without retaining a sufficient portion or amount thereof to pay any tax or interest which may thereafter be assessed on account of the delivery or transfer of such securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer, under the provisions of this article, unless the State Treasurer and Attorney General consent thereto in writing. And it shall be lawful for the State Treasurer, together with the Attorney General, personally or by representatives, to examine said securities, deposits or assets at the time of such delivery or transfer. Failure to serve such notice or failure to allow such examination, or failure to retain a sufficient portion or amount to pay such tax and interest as herein provided shall render said safe deposit company, trust company, corporation, bank or other institution, person or persons liable to the payment of the amount of the tax and interest due or thereafter to become due upon said securities, deposits or other assets, including the shares of the capital stock of, or other interests in, the safe deposit company, trust company, corporation, bank or other institution mak-

ing the delivery or transfer, and in addition thereto, a penalty of one thousand dollars; and the payment of such tax and interest thereon, or of the penalty above prescribed, or both, may be enforced in an action brought by the State Treasurer in any court of competent jurisdiction.

384. Refunding excess of tax by State Treasurer.] § 10. When any amount of said tax shall have been paid erroneously to the State treasury, it shall be lawful for him on satisfactory proof rendered to him by said county treasurer of said erroneous payments to refund and pay to the executor, administrator or trustee, person or persons who have paid any such tax in error the amount of such tax so paid: *Provided*, that all applications for the repayment of said tax shall be made within two years from the date of said payment.

385. Appraisement of property—How made.] § 11. It shall be the duty of the county judge to ascertain whether any transfer of any property be subject to an inheritance tax under the provisions of this Act, and, if it be subject to such inheritance tax, to assess and fix the then cash value of all estates, annuities and life estates or terms of years growing out of said estates and the tax to which the same is liable. The county judge, upon the application of any interested party, including the Attorney General, or upon his own motion as often as, or whenever occasion may require, may hear evidence and determine the fair cash value of such estate and the amount of inheritance tax to which the same is liable or the county judge may, in such case, in his discretion, where the facts are complicated and evidence is voluminous, appoint some competent person as appraiser to appraise the fair cash value at the time of the transfer thereof of the property of persons whose estates shall be subject to the payment of any inheritance tax imposed by this Act. Whether the fair cash value of such estate shall be ascertained and determined by the appraiser appointed by the county judge or by the county judge, notice shall, in each case, be given by mail to all persons known to have a [or] claim an interest in such property, including the Attorney General, and to such persons as the county judge by order directs; of the time and place he will appraise such property: *Provided*, that in counties of the third class, because of the volume of general business transacted in the county courts of such counties, the county judge in such counties of the third class may, in his discretion, appoint appraisers in any and all cases. In case an appeal is taken to the county court, it shall be the duty of the county clerk, within two days after such appeal shall have been perfected, to notify in writing the Attorney General and county treasurer. Within five days after the judgment of the county court shall be entered on appeal, it shall

be the duty of the county clerk to make and transmit a certified copy of such judgment to the Attorney General and county treasurer. Persons of full age and *sui juris* may, in writing, waive such notice, and consent to an immediate hearing by the county judge or the appraiser, as the case may be.

Both the appraiser and the county judge are hereby authorized and empowered to use subpoenas for and to compel the attendance of witnesses before them, respectively, and to take the evidence of such witnesses under oath. Any persons who shall be served with a subpoena to appear and testify or to produce books and papers, issued either by the county judge or by the appraiser, and who shall refuse or neglect to appear or testify or to produce books and papers relevant to such assessment, as commanded in such subpoena, shall be deemed guilty of a misdemeanor, and shall, on conviction, be punished by a fine of not less than ten dollars nor more than twenty-five dollars for each offense. Any circuit court or judge thereof, either in term time or vacation, upon application of the county judge or appraiser, as the case may be, may, in its or his discretion, compel the attendance of witnesses, the production of books and papers, and giving of testimony before such county judge or appraiser, as the case may be, by attachment for contempt or otherwise in the same manner as the production of evidence may be compelled before said court. When the evidence is taken by an appraiser, he shall make a report thereof and of such value in writing to said county judge, with the depositions of the witnesses examined and such other facts in relation thereto, and to said matters as said county judge may by order require. The order of the county judge assessing and fixing an inheritance tax, together with the report, if any, of appraiser appointed by such county judge, shall be filed in the office of the county clerk. It shall be the duty of the county clerk, within five days after the filing of such order assessing and fixing the inheritance tax, to make and transmit a certified copy of such order to the Attorney General and to the county treasurer of the county in which such assessment is had, and, also, to give notice by mail to all parties known to be interested in such estate, substantially in such form as may be prescribed and furnished to the county clerk by the Attorney General.

Any person or persons, including the Attorney General, dissatisfied with the appraisement or assessment, may appeal therefrom to the county court of the proper county within sixty days after the making and filing of such assessment order on paying or giving to the county judge security satisfactory to pay all costs, together with whatever taxes shall be fixed by the court: *Provided*, no bond or security shall be required of the Attorney General.

The said appraiser shall be paid by the county treasurer out of any funds he may have in his hands on account of the inheritance tax collected in said appraisement, as by law provided, on the certificate of the county judge, such compensation as such judge may deem just for said appraiser's services as such appraiser, not to exceed ten dollars (\$10.00) per day for each [day] actually and necessarily employed in such appraisement and not to exceed fifteen per cent of the aggregate amount of tax levied and assessed by the county judge: *Provided*, such appraiser shall in no case receive less than ten dollars (\$10.00).

Such appraiser shall, also, be entitled to receive his actual and necessary traveling expenses and disbursements, including witness fees paid by him, if any, such expenses and disbursements to be paid by the county treasurer on the order of the county judge, out of the inheritance tax collected in such appraisement.

It shall be the duty of the Attorney General to exercise general supervision over the assessment and collection of the inheritance tax provided in this Act, and in the discharge of such duty, the Attorney General may institute and prosecute such suits and proceedings as may be necessary and proper, appearing therein for such purpose; and it shall be the duty of the several State's attorneys to render assistance therein when requested by the Attorney General so to do. [Amended by Act approved June 28, 1913. In force July 1, 1913. Laws 1913, p. 513.]

386. Fees of county clerks—Inheritance tax attorney—Appointments authorized—Salary—Fees generally.] § 12. The fees of the clerk of the county court in inheritance tax matters in the respective counties of this State, as classified in the Act concerning fees and salaries, shall be as follows:

In counties of the first and second class, for services in all proceedings in each estate before the county judge the clerk shall receive a fee of five dollars. In all such proceedings in counties of the third class, the clerk shall receive a fee of ten dollars. Such fees shall be paid by the county treasurer, on the certificate of the county judge, out of any money in his hands, on account of said tax. In counties of the third class, the Attorney General shall designate an assistant or assistants Attorney General, whose special duty it shall be to attend to all matters pertaining to the enforcement of this Act in respect to the appraisement, assessment and collection of the inheritance tax in such counties. In counties of the third class, the clerk of the county court may appoint a clerk in the office of the clerk of said court, to be known as the "inheritance tax clerk," whose compensation shall be fixed by the county judge, not to exceed fifteen hun-

dred dollars per year, and not to exceed the fee earned in said office in inheritance tax matters, the surplus of such fees over said compensation so fixed to be turned into the county treasury. In addition to the above, the clerk of the county court shall be entitled, in all suits brought for the collection of delinquent inheritance tax, and all contested inheritance tax cases appealed from the county judge to the county court, and in all appeals from the county court to the Supreme Court, the same fees as are now, or which may hereafter be, allowed by law in suits at law, or in the matter of appeals at law, to or from the county court, which fees shall be taxed as costs and paid as in other cases at law; and in all cases arising under this Act, including certified copies of documents or records in his office, for which no specific fees are provided, the clerk of the county court shall charge against and collect from the persons applying for, or entitled to such services, or certified copies, the same fees as are now, or which may hereafter be, allowed for similar services or certified copies in said court, and for recording inheritance tax receipts required to be recorded in his office, he shall receive the same fees which now are or hereafter may be allowed by law to the recorder of deeds for recording similar instruments. [As amended by Act approved June 28, 1913. In force July 1, 1913. Laws 1913, p. 515.]

387. Appraiser—Penalty for receiving fee or reward.] § 13. Any appraiser appointed by this Act, who shall take any fee or reward from any executor, administrator, trustee, legatee, next of kin or heir of any decedent, or from any other person liable to pay said tax or any portion thereof, shall be guilty of a misdemeanor, and upon conviction in any court having jurisdiction of misdemeanors, he shall be fined not less than two hundred and fifty dollars nor more than five hundred dollars and imprisoned not exceeding ninety days; and in addition thereto the county judge shall dismiss him from such service.

388 Jurisdiction of county court over property of new resident decedent.] § 14. The county court in the county in which the property is situated of the decedent, who was not a resident of the State or in the county of which the deceased was a resident at the time of his death, shall have jurisdiction to hear and determine all questions in relation to the tax arising under the provisions of this Act, and the county court first acquiring jurisdiction hereunder shall retain the same to the exclusion of every other.

389. Failure to pay tax—Proceedings in county court.]
§ 15. If it shall appear to the county court that any tax accruing under this Act has not been paid according to law, it shall issue a summons summoning the persons interested in the property liable to the tax to appear before the court on a day certain, not more than three months after the date of such summons, to show cause why said tax should not be paid. The process, practice and pleadings, and the hearing and determination thereof, and the judgment in said court in such cases shall be the same as those now provided, or which may hereafter be provided in probate cases in the county courts in this State, and the fees and costs in such cases shall be the same as in probate cases in the county courts of this State.

390. Attorney General to prosecute collection of tax, etc.]
§ 16. Whenever it appears that any tax is due and unpaid under this Act, and the persons, institutions or corporations liable for said tax have refused or neglected to pay the same, it shall be the duty of the Attorney General, if he has proper cause to believe a tax is due and unpaid, to prosecute the collection of the same by a bill in chancery, filed in the name of the People of the State of Illinois, to enforce the lien of the inheritance tax, or, if there be grounds for the same, to secure an injunction against the transfer and delivery or other disposition of property subject to the lien for the payment of the inheritance tax, and the county courts are invested with full jurisdiction to hear and determine such suits. The process, practice and proceedings shall be the same as in cases in chancery, except that the answer of the defendant need not be under oath.

In addition to the remedy hereinabove provided, any inheritance tax due and unpaid may be recovered in an action of assumpsit brought by the Attorney General, in the name of the People of the State of Illinois, against any person liable for such tax and the Attorney General is hereby authorized to bring such action in any court having jurisdiction.

391. County judge and county clerk—Quarterly statements to county treasurer.] § 17. The county judge and county clerk of each county shall, every three months, make a statement in writing to the county treasurer of the county of the property from which or the party from whom he has reason to believe a tax under this Act is due and unpaid.

It shall be the duty of the county treasurer on the first day of January, April, July and October of each year to make and transmit to the Attorney General a statement of the inheritance tax due and unpaid in all estates in which the county judge, or county court, as the case may be, has levied and assessed such tax as the same appears from the certified copy of the orders of the county judge, or the certified copy of the judgment of the county court assessing and fixing such tax on file in his office: *Provided*, in case an appeal shall be taken from the county judge to the county court in any case, such statement shall not include the estate in which such appeal is pending and undisposed of. [As amended by Act approved June 28, 1913. In force July 1, 1913. Laws 1913, p. 515.]

392. § 18. Repealed. See Laws 1913, p. 513.

393. **State Treasurer shall furnish book to county judge.]** § 19. The Treasurer of the State shall furnish to each county judge a book, in which he shall enter the returns made by appraisers, the cash value of annuities, life estates and terms of years and other property fixed by him, and the tax assessed thereon and the amounts of any receipts for payments thereof filed with him, which books shall be kept in the office of the county judge as a public record.

394. **Payment by county to State Treasurer—Receipt—Report to Auditor semi-annually.]** § 20. The treasurer of each county shall collect and pay to the State Treasurer all taxes that may be due and payable under this Act, who shall give him a receipt therefor, of which collection and payment he shall make a report under oath to the Auditor of Public Accounts, on the first Monday in March and September of each year, stating for what estate paid, and in such form and containing such particulars as the Auditor may prescribe; and for all said taxes collected by him and not paid to the State Treasurer by the first day of October and April of each year, he shall pay interest at the rate of ten per cent per annum.

395. **Fees of county treasurer.]** § 21. The treasurer of each county shall be allowed to retain two per cent on all taxes paid and accounted for by him under this Act in full for his services in collecting and paying the same, in addition to his salary or fees now allowed by law.

396. **Receipt from county treasurer—Sealing and recording same.]** § 22. Any person or body politic or corporation shall,

upon the payment of the sum of fifty cents, be entitled to a receipt from the county treasurer of any county or the copy of the receipt at his option that may have been given by said treasurer for the payment of any tax under this Act, to be sealed with the seal of his office, which receipt shall designate on what real property, if any, of which any deceased may have died seized, said tax has been paid and by whom paid, and whether or not it is in full of said tax; and said receipt may be recorded in the clerk's office of said county in which the property may be situated, in a book to be kept by said clerk for such purpose.

397. Liability to taxation—How determined—Appeal to supreme court.] § 23. When any person interested in any property in this State, which shall have been transferred within the meaning of this Act shall deem the same not subject to any tax under this Act, he may file his petition in the county court of the proper county to determine whether said property is subject to the tax herein provided, in which petition the county treasurer and all persons known to have or claim any interest in said property shall be made parties. The county court may hear the said cause upon the relation of the parties and the testimony of witnesses, and evidence produced in open court, and, if the court shall find said property is not subject to any tax, as herein provided, the court shall, by order, so determine; but if it shall appear that said property, or any part thereof, is subject to any such tax, the same shall be appraised and taxed as in other cases. An adjudication by the county court, as herein provided, shall be conclusive as to the lien of the tax herein provided upon said property, subject to appeal to the Supreme Court of the State by the county treasurer, or Attorney General of the State, in behalf of the people, or by any party having an interest in said property. The fees and costs in all cases arising under this section shall be the same as are now or may hereafter be allowed by law in cases at law in the county court.

398. Continuation of lien—Limitation.] § 24. The lien of the collateral inheritance tax shall continue until the said tax is settled and satisfied: *Provided*, that said lien shall be limited to the property chargeable therewith: *And, provided, further*, that all inheritance taxes shall be sued for within five years after they are due and legally demandable, otherwise they shall be presumed to be paid and cease to be a lien as against any purchaser of real estate.

399. Highest rate in certain cases—Return of tax wrongfully imposed—Other provisions.] § 25. When property is transferred or limited in trust or otherwise, and the rights, interest or estates of the transferees or beneficiaries are dependent upon con-

tingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon said transfer at the highest rate which, on the happening of any of the said contingencies or conditions, would be possible under the provisions of this article, and such tax so imposed shall be due and payable forthwith by the executors or trustees out of the property transferred: *Provided, however,* that on the happening of any contingency whereby the said property, or any part thereof is transferred to a person, corporation or institution exempt from taxation under the provisions of the inheritance tax laws of this State, or to any person, corporation or institution taxable at a rate less than the rate imposed and paid, such person, corporation or institution shall be entitled to a return of so much of the tax imposed and paid as is the difference between the amount paid and the amount which said person, corporation or institution should pay under the inheritance tax laws, with interest thereon at the rate of three per centum per annum from the time of payment. Such return of over-payment shall be made in the manner provided for refunds under section eight.

Estates or interests in expectancy which are contingent or defeasible and in which proceedings for the determination of the tax have not been taken or where the taxation thereof has been held in abeyance, shall be appraised at their full, undiminished value when the persons entitled thereto shall come into the beneficial enjoyment or possession thereof, without diminution for or on account of any valuation theretofore made of the particular estates for the purposes of taxation, upon which said estates or interests in expectancy may have been limited.

Where an estate for life or for years can be divested by the act or omission of the legatee or devisee it shall be taxed as if there were no possibility of such divesting.

400. Compounding of claims—Powers of State Treasurer and Attorney General.] § 26. The State Treasurer, by and with the consent of the Attorney General expressed in writing, is hereby empowered and authorized to enter into an agreement with the trustees of any estate in which remainders or expectant estates have been of such a nature, or so disposed and circumstanced that the taxes therein were held not presently payable, or where the interests of the legatees or devisees were not ascertainable under an Act to tax gifts, legacies, and inheritances, etc., in force July 1, 1885, and amendments thereto; and to compound such taxes upon such terms as may be deemed equitable and expedient; and to grant discharge to said trustees upon the payment of the taxes provided for in such composition: *Provided, however,* that no such composition shall be conclusive, in favor

of said trustees as against the interests of such *cestuis que* trust as may possess either present rights of enjoyment, or fixed, absolute or indefeasible rights of future enjoyment, or of such as would possess such rights in the event of the immediate termination of particular estates, unless they consent thereto, either personally, when competent, or by guardian. Composition or settlement made or effected under the provisions of this section shall be executed in triplicate, and one copy filed in the office of the State Treasurer, one copy in the office of the clerk of the county court wherein the appraisement was had or the tax was paid, and one copy delivered to the executors, administrators or trustees who shall be parties thereto.

401. Guardian for infant.] § 27. If it appears at any stage of an inheritance tax proceeding that any person known to be interested therein is an infant or person under disability, the county judge may appoint a special guardian of such infant or person under disability.

402. Bequests to hospitals, churches and other organizations exempted.] § 28. When the beneficial interests of any property or income therefrom shall pass to or for the use of any hospital, religious, educational, bible, missionary, tract, scientific, benevolent or charitable purpose, or to any trustee, bishop or minister of any church or religious denomination, held and used exclusively for the religious, educational or charitable uses and purposes of such church or religious denomination, institution or corporation, by grant, gift, bequest or otherwise, the same shall not be subject to any such duty or tax, but this provision shall not apply to any corporation which has the right to make dividends or distribute profits or assets among its members.

403. Transfer defined.] § 29. When property, or any interest therein or income therefrom, shall pass to or for the use of any person, institution or corporation by the death of another, by deed, instrument or memoranda, such passing shall be deemed a transfer within the meaning of this Act, and taxable at the same rates, and be appraised in the same manner and subjected to the same duties and liabilities as any other form of transfer provided in this Act.

404. Certified copies of papers to be furnished—Fees for same.] § 30. On the written request of the county treasurer or county judge, in the county wherein an appraisement has been initiated, the clerk of the county court and in counties having a probate court, the clerk of the probate court and the recorder of deeds shall furnish certified copies of all papers within their care or custody, or records material in the particular appraisement,

and the said clerk and recorder shall receive the same fee or compensation for such certified copies as they would be entitled by law in other cases, which shall be paid to them by the county treasurer of the proper county, out of moneys in his hands on account of inheritance tax collections, on the presentation of itemized bills therefor, approved by the county judge of the proper county.

405. Repeal.] § 31. That "An Act to tax gifts, legacies and inheritances in certain cases, and to provide for the collection of the same," approved June 15, 1895, in force July 1, 1895, as amended by Act approved May 10, 1901, in force July 1, 1901, and all laws or parts of laws inconsistent herewith be and the same are hereby repealed: *Provided, however,* that such repeal shall in no wise affect any suit, prosecution or court proceeding pending at the time this Act shall take effect, or any right which the State of Illinois may have at the time of the taking effect of this Act, to claim a tax upon any property under the provisions of the Act or Acts hereby repealed, for which no proceeding has been commenced; and all appeals and rights of appeal in all suits pending, or appeals from assessments of tax made by appraisers' reports, orders fixing tax or otherwise existing in this State at the time of the taking effect of this Act.

TO PROVIDE FOR CASUAL DEFICITS OR FAILURES IN REVENUES.

AN ACT to provide for casual deficits or failures in revenues. [Approved April 2, 1897. In force July 1, 1897. Laws 1897, p. 287.]

406. Whenever casual deficits or failures in the revenues of the State occur.

407. Loan—How made and when awarded.

408. Bonds or certificates to be registered—Interest and principal—How paid—Appropriation.

406. Whenever casual deficits or failures in the revenues of the State occur.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly;* That whenever casual deficits or failures in revenues of the State occur, in order to meet the same, the Governor, Auditor and Treasurer are hereby authorized to contract debts, never to exceed in the aggregate the sum of two hundred and fifty thousand dollars, and moneys thus borrowed shall be applied to the purpose for which they were obtained, or to pay the debts thus created, and to no other purpose: *Provided,* that all moneys so borrowed shall be borrowed for no longer time than two years.

407. Loan—How made and when awarded.] § 2. Whenever the borrowing of money under section one of this Act is contemplated, it shall be the duty of the Governor, Auditor and Treasurer to advertise for proposals for such loan, for ten days, in one of the daily newspapers printed in each of the cities of New York, Chicago and Springfield, setting forth in said advertisements the amount of debt proposed to be contracted and the time and place for the payment of the principal and interest. And the loan shall be awarded to the person or persons agreeing to take it at the lowest rate of interest not exceeding five per cent per annum.

408. Bonds or certificates to be registered—Interest and principal—How paid—Appropriation.] § 3. There shall be prepared under the direction of the officers named in this Act such form of bonds or certificates as they shall deem advisable, which, when issued, shall be signed by the Governor, Auditor and Treasurer, and shall be registered by the Auditor in a book to be kept by him for that purpose. The interest and principal of such loan shall be paid by the Treasurer out of the general revenue fund. There is hereby appropriated out of any money in the treasury a sum not exceeding the sum of two hundred and seventy thousand dollars, for the payment of the interest and principal of any debts contracted under this Act.

The Auditor of Public Accounts is hereby authorized and directed to draw his warrant on the State Treasurer for the amount of all such payments.

FUND FOR UNIVERSITY OF ILLINOIS.

AN ACT to provide by State tax for a fund for the support and maintenance of the University of Illinois. [Approved June 10, 1911. In force July 1, 1911. L. 1911, p. 484.]

409. Annual tax levy for fund for use of University of Illinois.

410. Disposition of fund.

409. Annual tax levy for fund for use of University of Illinois.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That there shall be levied and collected for the year 1912 and annually thereafter at the same time and in the same manner that State taxes are collected, a one mill tax for each dollar of the assessed valuation of the taxable property of this State to be paid into the treasury of the State and set apart as a fund for the use and maintenance of the University of Illinois.

410. Disposition of fund.] § 2. Such fund when so collected, paid in and set apart, shall remain in the treasury of this State until appropriated to the use of the said University of Illinois by Act of the General Assembly in accordance with section 18, article 4, of the Constitution of this State.

DIVISION IX.

ELECTIONS.

AN ACT in regard to elections, and to provide for filling vacancies in elective offices. [Approved April 3, 1872. In force July 1, 1872. Laws 1871-2, p. 380.]

ELECTORS OF PRESIDENT AND VICE-PRESIDENT OF UNITED STATES.

1. Election.
2. Returns—Canvass—Tie.
3. Result published—Certificate sent to person elected.
4. Meeting of electors—Mileage.
5. Vacancies filled.

1. **Elections.]** § 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly:* That there shall be elected, by general ticket, on the Tuesday next after the first Monday in November preceding the expiration of the term of office of each president of the United States as many electors of president and vice president of the United States as this State may be entitled to elect—which election shall be conducted and returns thereof made as hereinafter provided: *Provided*, that if congress should hereafter fix a different day for such election, then the election for electors shall be held on such day as shall be named by Act of congress.¹

2. **Returns—Canvass—Tie.]** § 2. The county clerks of the several counties shall, within eight days next after holding an election for electors of president and vice president of the United States, as is provided for in this Act, make three copies of the abstract of votes for electors, and transmit by mail one of said copies to the Governor, another to the office of the Secretary of State, and retain the third in his office, to be sent for by the Gov-

(1) The Constitution of the United States, Art. II, § 2, has made the following provision concerning the electors of president and vice-president:

“Each State shall appoint, in such manner as the legislature thereof may direct, a number of electors equal to the whole number of senators and representatives to which the State may be entitled in the Congress; but no senator or representative, or person holding an office of trust or profit under the United States shall be appointed an elector.”

Concerning the meeting of electors of president and vice-president, the Constitution, Art II, § 4, provides as follows:

“The Congress may determine the time of choosing the electors and the day on which they shall give their votes, which day shall be the same throughout the United States.”

Congress, by Act of January 23, 1845, provided that the election for electors of president and vice-president shall be on Tuesday after the first Monday in November, and by Act of March 1, 1792, that the day of giving their votes for president and vice-president shall be the first Wednesday in December.

error in case both the others should be mislaid. Within twenty days after the holding of such election, and sooner if all the returns are received by either the Governor or by the Secretary of State, the Secretary of State, Auditor of Public Accounts and Treasurer, or any two of them, shall, in the presence of the Governor, proceed to open and canvass said election returns, and to declare the persons having the highest number of votes elected; but should any two or more persons be returned with an equal and the highest vote, the said Secretary of State shall cause a notice of the same to be published, which notice shall name some day and place, not less than five days from the time of the publication of such notice, upon which the said Secretary, Auditor and Treasurer will decide by lot which of said persons so equal and highest is elected. And upon the day and at the place so appointed in said notice, the said Secretary, Auditor and Treasurer, or any two of them, shall, in the presence of the Governor, decide by lot which of the persons so equal and highest shall be elected.

3. Result to be published—Certificate sent to person elected.] § 3. The Governor shall cause the result of said election to be published, and shall transmit by mail, to the persons elected, certificates of their election.

4. Meeting of electors—Mileage.] § 4. The electors, chosen as aforesaid, shall meet at the seat of government of this State, at the time appointed by the laws of the United States, and give their votes in, in the manner therein provided, and perform such duties as are or may be required by law. Each elector shall receive for every twenty miles necessary travel in going to the seat of government to give his vote and returning to his residence, to be computed by the most usual route, the sum of \$3, to be paid on the warrant of the auditor, out of any money in the treasury not otherwise appropriated.

5. Vacancy filled.] § 5. In case any person declared duly elected an elector of president and vice president of the United States shall fail to attend at the State House, at the seat of government of this State, at or before the hour of twelve o'clock, at noon, of the day on which his vote is required to be given, it shall be the duty of the elector or electors of president and vice president, attending at the time and place, to appoint a person or persons to fill such vacancy: *Provided*, that should the person or persons chosen by the people, as aforesaid, arrive at the place aforesaid before the votes for president and vice president are actually given, the person or persons appointed to fill such vacancy shall not act as elector of president and vice president.

TIME OF HOLDING ELECTIONS FOR CERTAIN OFFICERS.

6. Representatives in congress.
- 6½. Election of United States senator.
7. Governor, lieutenant governor, secretary of state, auditor and attorney general.
8. Superintendent of public instruction.
9. State treasurer.
10. Judges of supreme court.
11. Clerks of supreme court.
12. Judges of circuit courts.
13. The election of judges of the superior court of Cook county.
14. Repeal.
15. Emergency.
16. State senators.
17. Members of the house of representatives.
18. The election of county judges and county clerks.
19. The election of sheriffs and coroners.
20. Clerks of circuit courts.
21. The election of clerk of superior court of Cook county.
22. The election of clerk of criminal court of Cook county.
23. The election of county treasurers.
24. County treasurer *ex-officio* assessor—Fees.
25. The election of county surveyors.
26. The election of county superintendent of schools.
27. The election of State's attorneys.
28. State board of equalization.
29. Recorder of deeds in certain counties.
30. County commissioners in counties not under township organization.

6. § 6. **Representatives in congress** shall be elected on Tuesday next after the first Monday in November, in the year of our Lord 1872, and every two years thereafter; but if congress shall fix a different day, then such election shall be held on the day so fixed by congress.

6½. **Election of United States Senator.]** § 6a. A United States Senator shall be elected on the Tuesday next after the first Monday in November preceding the expiration of the term of office of each Senator in Congress from this State: *Provided*, that if Congress shall fix a different day for such election, then the election shall be held on the day so fixed by Congress. [Added by Amendment by Act approved June 25, 1913. In force July 1, 1913. Laws 1913, p. 307.]

7. § 7. **The Governor, Lieutenant-Governor, Secretary of State, Auditor of Public Accounts and Attorney General** shall be elected on Tuesday next after the first Monday of November, in the year of our Lord 1872, and every four years thereafter. [See Const., Art. 5, § 3.]

8. § 8. **The Superintendent of Public Instruction** shall be elected on Tuesday next after the first Monday of November, in the year of our Lord 1874, and every four years thereafter. [See Const., Art. 5, § 3.]

9. § 9. **The State Treasurer** shall be elected on Tuesday

next after the first Monday of November, in the year of our Lord 1872, and every two years thereafter. [See Const., Art. 5, § 3.]

10. § 10. **The Judges of the Supreme Court** shall hereafter be elected as follows, to-wit: In the first, second, third, sixth and seventh districts on the first Monday of June, in the year of our Lord 1879, and every nine years thereafter. In the fourth district, on the first Monday of June, in the year of our Lord 1876, and every nine years thereafter. In the fifth district, on the first Monday of June, in the year of our Lord 1873, and every nine years thereafter. [See Const., Art. 6, § 6.]

11. § 11. **A clerk of the Supreme Court** in each grand division shall be elected on Tuesday next after the first Monday of November, in the year of our Lord 1872, and every six years thereafter. [See Const., Art. 6, § 10.]

12. § 12. **The judges of the circuit court** shall be elected on the first Monday of June, in the year of our Lord 1873, and every six years thereafter. [See Const., Art. 6, § 14.]

13. **The election of judges of the superior court of Cook county.]** § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That each of the sitting judges of the superior court of Cook county shall hold his office until the expiration of the term for which he was elected; and from and after the passage of this Act twelve (12) judges of the superior court of Cook county shall be elected as follows: Six (6) judges on the Tuesday next after the first Monday in November in the year of our Lord 1910, and every six (6) years thereafter, and four (4) judges on the Tuesday next after the first Monday in November in the year of our Lord 1911, and every six (6) years thereafter, and one (1) judge on the first Tuesday in April, in the year of our Lord 1907, and every six (6) years thereafter, and one (1) judge on the first Monday in June in the year of our Lord 1909, and every six (6) years thereafter.

Each of the judges so elected as herein provided shall enter upon the duties of his office on the first Monday in December next after his election and shall hold office for a term of six (6) years and until his successor is elected and qualified.

14. **Repeal.]** §2. All Acts and parts of Acts in conflict with this Act as hereby repealed.

15. **Emergency.]** § 3. Whereas, an emergency exists, therefore this Act shall be in force from and after its passage and approved [approval] by the Governor. [Approved and in force February 16, 1907. Laws 1907, p. 262.]

16. § 14. **State senators** shall be elected as follows, to-wit: Those in districts bearing even numbers shall be elected on Tuesday next after the first Monday of November, in the year of our

Lord 1872, and every four years thereafter. Those in districts bearing odd numbers shall be elected on Tuesday next after the first Monday of November, in the year of our Lord 1872, for the term of two years. And after that they shall be elected on Tuesday next after the first Monday of November, in the year of our Lord 1874, and every four years thereafter. [See Const., Art. 4, § 6.

17. § 15. **Members of the house of representatives** shall be elected on Tuesday next after the first Monday of November, in the year of our Lord 1872, and every two years thereafter. [See Const., Art. 4, § 7.

18. **Election of county judges and county clerks.] § 16.** The county judges and county clerks shall be elected on Tuesday next after the first Monday of November, 1882, and every four years thereafter, and shall enter upon the duties of their offices on the first Monday of December after their election. [As amended by Act approved May 10, 1881. In force July 1, 1881. Laws 1881, p. 94.

19. **Election of sheriffs and coroners.] § 17.** The sheriffs shall be elected on Tuesday next after the first Monday of November, 1882, and every four years thereafter, and shall enter upon the duties of their offices on the first Monday of December after their election; and coroners shall be elected on Tuesday next after the first Monday of November, 1882, who shall hold their offices two years, and on Tuesday next after the first Monday of November, 1884, and every four years thereafter, there shall be elected a coroner in each of the counties of this State, and they shall enter upon their offices on the first Monday of December after their election. [As amended by Act approved May 10, 1881. In force July 1, 1881. Laws 1881, p. 94.

20. § 18. The clerks of the circuit court shall be elected on Tuesday next after the first Monday of November, in the year of our Lord 1872, and every four years thereafter. [See Const., Art. 10, § 8.

21. **Election of the clerk of the superior court of Cook county.] § 19.** The clerk of the superior court of Cook county shall be elected on Tuesday next after the first Monday of November, A. D. 1884, and every four (4) years thereafter; and shall enter upon his office on the first Monday of December after his election. [As amended by Act approved May 10, 1881. In force July 1, 181. Laws 1881, p. 95.

22. **Election of clerk of criminal court of Cook county.] § 20.** The clerk of the criminal court of Cook county shall be elected on Tuesday next after the first Monday of November, 1886, and every four years thereafter. [As amended by Act approved June 30, 1885. In force July 1, 1885.

23. Election of county treasurers.] § 21. The county treasurers shall be elected on Tuesday next after the first Monday of November, 1882, and every four (4) years thereafter; they shall enter upon their offices on the first Monday of December after their election. [As amended by Act approved May 10, 1881. In force July 1, 1881. Laws 1881, p. 95.]

24. County treasurer ex-officio assessor—Fees.] § 1. In counties not under township organization there shall be elected on Tuesday next after the first Monday of November, 1882, and every four years thereafter, a county treasurer, who shall be *ex-officio* the county assessor, and who shall receive all fees as treasurer and assessor, as is provided by law, and who shall hold his office for four years, and until his successor is elected and qualified: *Provided*, that no person having once been elected county treasurer under this Act, shall be eligible to re-election to said office for four years after the expiration of the term for which he shall have been elected. [As amended by Act approved May 10, 1881. In force July 1, 1881. Laws 1881, p. 62.]

25. Election of county surveyors.] § 22. A county surveyor shall be elected in and for each county on Tuesday next after the first Monday of November, in the year 1884, and every four (4) years thereafter; and shall enter upon his office on the first Monday in December after his election. [As amended by Act approved May 10, 1881. In force July 1, 1881. Laws 1881, p. 95.]

26. Election of county superintendents of schools.] § 23. The county superintendents of schools shall be elected on Tuesday next after the first Monday of November, 1882, and every four years thereafter; they shall enter upon their offices on the first Monday of December after their election. [As amended by Act approved May 10, 1881. In force July 1, 1881. Laws 1881, p. 95.]

27. Election of State's attorneys.] § 24. A State's attorney shall be elected in each county on Tuesday next after the first Monday of November, 1884, and every four years thereafter, and shall enter upon his office on the first Monday in December after his election. [As amended by Act approved May 10, 1881. In force July 1, 1881. Laws 1881, p. 95.]

28. State Board of Equalization.] § 25. There shall be elected in each congressional district, on Tuesday next after the first Monday of November, in the year of our Lord 1872, and

*An Act to consolidate the offices of county treasurer and county assessor in counties not under township organization. [approved May 2, 1873. In force July 1, 1873. Laws 1873, p. 74.]

every four years thereafter, one elector, to serve as a member of the State's board of equalization. [See "Revenue," ¶ 106, § 100-1.

29. Recorders of deeds in certain counties.] § 26. In counties having a population of sixty thousand or more, there shall be elected a recorder of deeds, on Tuesday next after the first Monday of November, in the year of our Lord 1872, and every four years thereafter. [See Const., Art. 10, § 8.

[§ 27 of this Act, providing for the election of an assessor in counties not under township organization, is repealed by implication. See ¶ 25, § 22 of this chapter.]

30. County commissioners.] § 28. In counties not under township organization there shall be elected on Tuesday next after the first Monday of November, in the year of our Lord 1873, three officers, who shall be styled "The Board of County Commissioners," one of whom shall hold his office for one year, one for two years, and one for three years, to be determined by lot; and every year thereafter, one such officer shall be elected in each of said counties, for the term of three years. [See Const., Art. 10, § 6.

ELECTION PRECINCTS.

31. In counties under and not under township organization.

32. Change of election precincts—Dividing precincts into districts—When county board fails to redivide, etc.—Polling places.

33. Qualifications of judges.

31. In counties under and not under township organization.]

§ 29. In counties not under township organization, the election precincts shall remain as now established until changed by the board of county commissioners, but said county board may, from time to time, change the boundaries of election precincts and establish new ones. In counties under township organization each town shall constitute an election precinct. [As amended by Act approved June 22, 1885. In force July 1, 1885.

32. Change of election precincts—Dividing precincts into districts—When county board fails to redivide, etc.—Polling places.] § 30. The county board in each county shall, at its regular meeting in the month of June, or an adjourned meeting in the month of July, 1903, divide its election precincts which contain more than four hundred and fifty (450) voters, into election districts, so that each district shall contain, as nearly as may be practicable, four hundred (400) voters, and not more in any case than four hundred and fifty (450). Said district shall be composed of contiguous territory and in as compact form as can be for the convenience of the electors voting therein. The

several county boards in establishing said districts shall describe them by metes and bounds and number them. And so often thereafter as it shall appear by the number of votes cast at the general election held in November of any year, that any election district, or undivided election precinct, contains more than four hundred and fifty (450) voters, the county board of the county in which said district or precinct may be shall, at its regular meeting in the month of June, or an adjourned meeting in the month of July next, after such November election, redivide or readjust such election district, or election precinct, so that no district or election precinct shall contain more than the number of voters above specified. *If for any reason said county board shall fail in any year to redivide or readjust said election districts or election precincts, then said districts or precincts as then existing shall continue until the next regular June meeting of said county board; at which regular June meeting or an adjourned meeting in the month of July, said county board shall redivide or readjust said election districts or election precincts in manner as herein required. And on or before the first day of September, 1903, the county clerk in each county shall make a correct list of all election districts and election precincts into which the county is divided, designating each by its name or number, or name and number, as the case may be, and forward said list to the Secretary of State; and, thereafter, when at any meeting of the county board any redivision, readjustment or change in name or number of election districts or election precincts, is made, by the said county board, it shall be the duty of the county clerk to immediately notify the Secretary of State of such redivision, readjustment, or change.* The county board in every case shall fix and establish the places for holding elections in its respective county and all general and special elections, *town meeting elections or town elections*, shall be held at the places so fixed. The said polling places shall in all cases be upon the ground floor, in the front room, the entrance to which is in a highway or public street which is at least forty feet wide, and is as near the center of the voting population of the district as is practicable, and for the convenience of the greatest number of electors to vote thereat, and in no case shall an election be held in any room used or occupied as a saloon, dramshop, bowling alley or as a place of resort for idlers and disreputable persons, billiard hall or in any room connected therewith by doors or hallways. No person shall be permitted to vote at any election except in the district in which he resides: *Provided*, that the county board may, if it deem it for the best interest of the voters of any town or precinct, divide any election precinct which contains more than three hundred (300) legal voters, into two election precincts, *said pre-*

cincts to contain as near two hundred (200) voters as is possible: *Provided, further*, That it shall be the duty of the county board in each county where any State Soldiers' and Sailors Home or Homes, or any *National Home for disabled volunteer soldiers* are located, the inhabitants of which are entitled to vote, to fix and establish the place or places for holding such election or elections, at some convenient and comfortable place or places easy of access on the ground or grounds and within the enclosures where such State Soldiers' and Sailors' Home or Homes or National Home for disabled volunteer soldiers, are located. [Added by Act Approved May 15, 1903. In force July 1, 1903. Laws 1903, p. 172.]

33. **Qualifications of judges.]** § 31. That every person elected or chosen judge of election shall be of fair character, approved integrity, well informed, who can read, write and speak the English language, and has resided in the election district, in which he is to serve, for one year next preceding the election, and is entitled to vote therein at such election. [As amended by Act approved June 22, 1885. In force July 1, 1885.]

JUDGES AND CLERKS.

- 34. Judges—How appointed in counties not under township organization.
- 35. In counties under township organization.
- 36. Notice of appointment.
- 37. Term of office.
- 38. Vacancies filled.
- 39. Clerks of election.

34. **Judges—How appointed in counties not under township organization.]** § 32. In counties not under township organization, the county board of commissioners shall at its regular (or at a special) meeting in the month of June or July in each year, appoint in each election precinct or district, as the case may require (where judges have not been elected therein) three capable and discreet electors to be judges of election. No more than two persons of the same political party shall be appointed judges of the same election district or undivided precinct. The appointment shall be made in the following manner: The members of said county board of commissioners, who represent the political party having the greatest number of votes, on said county board of commissioners, being less than the whole number, shall select (and the county board of commissioners shall appoint such selection when made) two persons who are legal voters, as judges of election in each election precinct or district in said county, which gave in the preceding general election in said election precinct or district, the higher number of

votes to said political party having the greatest number of votes upon said county board of commissioners, and shall also select one person, who is a legal voter, as judge of election in each of the other election precincts or districts in said county, which at the preceding general election, gave in said election precinct or district, the second higher number of votes to said political party having the greatest number of votes on said county board of commissioners. The member of the county board of commissioners who represents the political party having the next highest number of votes upon said county board of commissioners shall have the power and authority to select (and the county board of commissioners shall appoint such selection when made) two persons who are legal voters, as judges of election in each election precinct or district, which at the preceding general election gave in said election precinct or district, the higher number of votes to said political party having the next highest number of votes upon said county board of commissioners, and said member of the county board of commissioners representing said political party having the next highest number of votes upon said county board of commissioners shall also select, and the county board of commissioners shall appoint the said selection, when made, one person, who is a legal voter, as judge of election in each of the other election precincts or districts in said county. In case the three members of the county board of commissioners represent three different political parties, then in that case, the member of the county board of commissioners representing the political party casting the highest number of votes at the preceding general election in any election precinct or district shall select the two judges of election to serve in such election precinct or district, and the member of the county board of commissioners who may represent the political party casting the next highest number of votes at the preceding general election in any election precinct or district, shall select the one judge of election to serve in such election precinct or district: *Provided*, that if any county board of commissioners shall be composed of members who belong to any one political party entirely, then in that case the chairman of the county central committee of the political party casting the highest or next highest number of votes at the last preceding general election in each election precinct or district shall select the two judges of election, or the one judge of election, as the case may be, and the county board of commissioners shall appoint the said judge or judges of election so selected by the chairman of the above mentioned county central committee. Said election judges shall hold their office

for one year from their appointment, and until their successors are duly appointed in the manner heretofore provided. The said county board of commissioners shall fill all vacancies in said office of judge of election at any time in the manner heretofore provided. [As amended by Act approved May 18, 1905. In force July 1, 1905. Laws 1905, p. 202.]

35. In counties under township organization.] § 33. In counties under township organization, the county board shall, at its regular (or at a special) meeting in the month of June of each year, except when such judges and clerks are appointed by election commissioners, appoint in each election district or precinct in the county, three capable and discreet electors to be judges of elections, and who shall possess the qualifications required by this Act for such judges. No more than two persons of the same political party shall be appointed judges in the same election district or undivided precinct. The town supervisor shall be appointed as one of such judges of election in the district or precinct in which he resides. The appointment of the remaining judges of election in the various election precincts and districts shall be made in the following manner: The members of the county board of supervisors belonging to the political party having the greatest number of votes upon said county board of supervisors shall select (and the county board shall appoint the selection so made) the majority of the election judges in each election district or precinct in each township in which said political party cast the highest number of votes at the preceding general election for Governor, and shall also select (and the county board shall appoint the selection so made) the minority judge of election in each election district or precinct in each township in which said political party cast the second highest number of votes for Governor at the preceding general election. The members of the county board of supervisors belonging to the political party having the second greatest number of votes upon said county board of supervisors shall select (and the county board shall appoint the selection so made) the majority of the election judges in each election district or precinct in each township in which said political party cast the highest number of votes at the preceding general election for Governor, and shall also select (and the county board shall appoint the selection so made) the minority election judge in the election district or precinct in each township in which said political party cast the second highest number of votes at the preceding general election for Governor: *Provided*, that if the county board of supervisors shall be composed of members who belong to any one political party entirely, then, in that case, the chairman of the

county central committee of the other political party casting the next highest number of votes in said county at the preceding general election is hereby empowered and authorized to make the selection of the minority judge of election, who shall serve in each of the election districts or precincts in said county, and the members of the county board of supervisors are hereby directed to make the appointment of said minority judges of election for each election district or precinct as selected by the chairman of the above mentioned county central committee. *And provided, further,* that where the county board shall be equally divided and two political parties shall be represented by an equal number of members, the selection and appointment of such judges of election shall be made as in the case where there is a majority of members on the county board belonging to one political party. The members representing the political party casting the highest number of votes in a township at the preceding election for Governor shall select the majority judges of election in said township, and the members representing the political party that cast the second highest number of votes at the preceding election for Governor in said township shall select the minority judges of election in said township, and the county board shall appoint the selection so made. *And provided, further,* that where a supervisor shall be elected in a township, said supervisor representing a political party that neither has the highest nor second highest number of votes for members on the said county board, the said supervisor shall be authorized and empowered to select a majority of the judges of election in the precincts or election districts in said township, such persons to represent the same political faith or belief as said supervisor, and the county board shall appoint the selection so made. The members of the county board representing the political party casting the second highest number of votes in said township at the preceding general election for Governor shall select the minority judges of election in said township and the county board shall appoint the selection so made. Such judges of election shall hold their office for one year from their appointment and until their successors are duly appointed in the manner hereinbefore provided. The said county board of supervisors shall fill all vacancies in said office of judges of election at any time, in the manner hereinbefore provided. [As amended by Act approved May 18, 1905. In force July 1, 1905. Laws 1905, p. 202.

36. Notice of appointment.] § 34. Immediately on the appointment of such judges, the county clerk shall make out and deliver to the sheriff of the county a notice thereof, directed to

each person so appointed, and the sheriff shall, within twenty days after the receipt of such notices, deliver the same to the several judges so appointed.

37. Term of office.] § 35. The judges so appointed shall be and continue judges of all general and special elections held within their respective precincts or districts, until other judges shall be appointed in like manner.

38. Vacancies filled.] § 36. If, at the time for the opening of any election, any person appointed or constituted a judge of election shall not be present, or will not act or take the oath to act in such capacity, the judge or judges present may appoint some other qualified elector to act in his place. If there be no judge of election present, or he refuses to act, such electors of the precinct or district as may then be present at the place of election, may fill the places of such judges by election from their number. The judges so appointed shall have the same power and be subject to the same penalties as other judges of election.

39. Clerks of election.] § 37. Each judge of election shall choose a person having the qualifications of a judge of election, to act as clerk of election, who may continue to act as such during the pleasure of the judge making such appointment. [As amended by Act approved May 18, 1905. In force July 1, 1905. Laws 1905, p. 202.]

OATH OF JUDGES AND CLERKS OF ELECTION.

40. Oath.

41. By whom administered.

40. Oath.] § 38. Previous to any vote being taken, the judges and clerks of the election shall severally subscribe and take an oath or affirmation, in the following form, to-wit:

I do solemnly swear [*or affirm, as the case may be*] that I will support the constitution of the United States, and the constitution of the state of Illinois, and that I will faithfully discharge the duties of the office of judge of election [*or clerk, as the case may be*], according to the best of my ability, and that I have resided in this election district for one year next preceding this election, and am entitled to vote at this election.

[As amended by Act approved June 22, 1885. In force July 1, 1885.]

41. By whom administered.] § 39. In case there shall be no judge or justice of the peace present at the opening of the election, or in case such judge or justice shall be appointed a judge or clerk of election, it shall be lawful for the judges of the election to administer the oath or affirmation to each other, and to the clerks of the election; and the person administering such

oath or affirmation, shall cause an entry thereof to be made and subscribed by him, and prefix to each poll book.¹

BALLOT BOXES AND POLL BOOKS.

- 42. Ballot boxes.
- 43. Judges to keep ballot boxes, etc.
- 44. Blanks, poll books, etc.

42. Ballot boxes.] § 40. The county board shall provide a sufficient number of ballot boxes, with secure locks and keys, at the expense of the county, for the several precincts and districts. There shall be an opening in the lid of each box not larger than is sufficient to admit a single closed ballot to be inserted therein at one time, through which each ballot voted shall be put into the box.

43. Judges to keep ballot boxes, etc.] § 41. The ballot boxes shall be delivered to and kept by the judges of election, and by them kept and delivered over to their successors.

44. Blanks, poll books, etc.] § 42. The county clerk shall provide, at the expense of the county, proper blanks, poll books and other necessary election blanks for each precinct and district in his county, and cause a suitable number thereof to be delivered to the judges of election, at least ten days before any election is to be held.

CONSTABLES APPOINTED TO ATTEND ELECTIONS—ORDER.

- 45. County board or judges may appoint.
- 46. Special constable—Compensation of constables.
- 47. Suppressing riots, etc.—Arrest.

45. County board, or judges, may appoint.] § 43. The county board may appoint one or more constables to attend each place of holding elections, and preserve order during the election; if no constable is appointed by the county board to attend any place of holding election, or if others shall be necessary to preserve order, the judges of election may appoint one or more constables for that purpose.

46. Special constable—Compensation of constables.] § 44. The judges of election may appoint any suitable person to act as a special constable during the election. Constables serving at such election shall be paid out of the county treasury, not exceeding \$2 per day for each day's service.

(1) The neglect of the judges or clerks of an election to take the prescribed oath does not vitiate an election; neither does the irregular administration of the oath have that effect. An oath irregularly administered—for example, upon a book other than the Bible—the parties administering and taking it supposing it to be a Bible, is a valid oath. *People v. Cook*, 4 Seld. R., 67. See *Taylor v. Taylor et al.*, 10 Minn. R., 107.

47. Suppressing riot, etc.—Arrest.] § 45. Any constable attending such election may call to his aid sufficient number of citizens to arrest any disorderly person or suppress any riot or disorder during the election. Whoever conducts himself in a riotous or disorderly manner at any election, and persists in such conduct after being warned to desist, may be arrested without warrant.

NOTICE OF ELECTION.

48. Manner of giving notice.

49. Sheriff or supervisor to post.

48. Manner of giving notice.] § 46. At least thirty days previous to any general election, and at least twenty days previous to any special election, except in cases otherwise provided for, the county clerk, in counties not under township organization, shall make out and deliver to the sheriff of his county, or in counties under township organization to the several supervisors of his county, three notices thereof for each precinct or district in which the election in such county is to be held. The notice may be substantially as follows:¹

Notice is hereby given, that on [*give the date*], at [*give the place of holding the election and the name of the precinct or district*], in the county of [*name of county*], an election will be held for [*give the title of the several offices to be filled*], which election will be opened at seven o'clock in the morning and continued open until five o'clock in the afternoon of that day.

Dated at ———, this — day of ———, in the year of our Lord one thousand nine hundred and —. ,

A. B., *County Clerk.*

49. Sheriff or supervisor to post.] § 47. The said sheriff or supervisor to whom the notices are delivered, shall post up, in three of the most public places in each precinct or district, the three notices therefor at least fifteen days before the time of holding a general election, and at least eight days before the time of holding a special election.²

Where the judges and clerks of an election act under color of office, having been duly appointed, that is sufficient to constitute them officers de facto, and in such case it is immaterial, so far as the validity of their election returns are concerned, whether they were sworn at the election or not. The law, in such case, presumes them to have been well appointed and qualified. *The People ex rel., etc., v. Hilliard*, 29 Ill. R., 423.

If the officers of election fail to perform their duty, the law provides a penalty but the election is not necessarily rendered void. *Taylor v. Taylor et al.*, 10 Minn., R., 107.

(1) If an election be held, without necessity, at a different place from that designated by law, the entire poll must be rejected. *Chadwick v. Melvin*, *Leading Cases on Elections* (Brightley), 251.

People ex rel. v. Waite, 70 Ill., 25; *Council of Village of Glencoe v. People ex rel.* 78 Ill., 382.

(2) A number of the sections under this caption have been modified in application by the Act of June 22, 1891, known as the "Australian election law," and some of them repealed wholly or partly by reason of their inconsistency with that Act. Those in the latter category have been eliminated with references to the provisions that supersede them. See ¶ 49, § 47.

CONDUCTING ELECTIONS—RETURNS.

50. Time of opening and closing polls.
51. Proclamation.
52. Ballot box publicly exhibited, etc.—Locked—Key.
53. Poll lists—how kept.
54. Ballots.
55. Form of ballot.
56. Form of cumulative ballot.
57. Manner of receiving and depositing ballot.
58. No adjournment or recess.
59. Clerks of election.
60. Irregular ballots.
61. Ballots strung and returned—When destroyed.
62. Examination of ballot in contested election.
63. Form of ballot.
64. Returns to be made to county clerk—canvass, etc.—Requirements as to lists forwarded to Secretary of State.
65. Compensation of judges and clerks.
66. Challengers.

50. Time of opening and closing polls.] § 48. The polls shall be opened at the hour of seven o'clock in the morning and continued open until five o'clock in the afternoon of the same day at which time the polls shall be closed; but if the judges shall not attend at the hour of seven o'clock in the morning, or if it shall be necessary for the electors present to appoint judges to conduct the election, as hereinbefore prescribed, the polls may, in that case, be opened at any hour before the time for closing the same shall arrive, as the case may require.² [See ¶ 197, § 34.

(2) Although the law may direct that the polls shall be closed at a certain hour specified, and this question is in issue, unless it be made to appear that votes were cast after that hour, which would change the result, the fact that the polls were kept open after that hour would not render the election void. *Piatt v. The People*, 29 Ill. R., 72.

It is held in New York that the provision as to the time of opening and closing the polls is directory; that, for instance, should the inspectors or judges, being misled by a defective time piece, close the polls a few minutes before a particular hour directed by the statute or receive a few votes after that hour, this will not render the election void. *People v. Cook*, 4 Seld. R., 92.

A court of chancery has no power to prevent the holding of an election of officers, upon the alleged ground of a want of authority to hold such an election, the remedy therefor being complete at law by writ of quo warranto. *The People ex rel. v. City of Galesburg*, 43 Ill. R., 485. *Walton et al. v. Develing et al.*, 61 Ill. R., 201.

While a court of chancery will not interfere to determine which of two persons has been elected to office, or try the rights of parties to hold an office, yet, in case of an election upon the question of the removal of a county seat, which is claimed to have resulted in favor of removal, it is alleged that such was not the result, by reason of the election being illegally held, or the vote not being a fair one, a court of chancery will entertain jurisdiction at the instance of those impeaching the election, to determine where the county seat is, although that inquiry may incidentally involve the question, whether the vote had been fairly taken, and if fraud had intervened therein to purge the polls. *Boren v. Smith et al.*, 47 Ill. R., 482. Same doctrine held in *The People ex rel. v. Wiant*, 48 Ill. R., 263.

As to the proper officers and the necessity thereof.—An election is not void although held by persons who are not officers de jure, if they are officers de facto, and act in good faith under color of authority. Where an election is required by law to be held and conducted the same as in general elections, which law requires three judges of election and two clerks, and the election is held by one acting in the capacity of a moderator of a town meeting, with but one clerk, it will be absolutely void and cannot form the basis on which any rights can be created or enforced. *Lippincott et al. v. Town of Pana et al.*, 92 Ill., 24.

51. Proclamation.] § 49. Upon opening the polls one of the clerks or judges of election shall make proclamation of the same, and at least thirty minutes before the closing of the polls proclamation shall be made in like manner that the polls will be closed in half an hour.¹

52. Ballot box publicly exhibited, etc.—Locked—Keys.] § 50. Before any ballot shall be deposited in the ballot box, the ballot box shall be publicly opened and exhibited, and the judges and clerks shall see that no ballot is in such box; after which the box shall be locked and the key delivered to one of the judges, and shall not be again opened until the close of the polls.

53. Poll lists—How kept.] § 51. Each clerk of the election shall keep a poll list, which shall contain a column headed “number,” and another headed “names of voters.” The name of each elector voting shall be entered upon each of the poll books by the clerks, in regular succession, under the proper headings, and the number of such voter placed opposite his name in the column headed “number.”²

54. Ballots.] § 52. The manner of voting shall be by ballot. The ballot shall be printed or written, or partly printed and partly written, upon plain paper, with the name of each candidate voted for, and the title of the offices. When the ballot is printed, the same shall be printed upon plain paper, in plain type, in straight lines, with a blank space below each name, of a width not less than equal to the width of the line in which the name is printed. [See Const., Art. 7, § 2.

55. Form of Ballot.] § 53. The names of all candidates for which the elector intends to vote shall be written or printed upon the same ballot, and the office to which he desires each to be elected shall be designated upon the ballot. [The Act of June 22, 1891, amends this section and prescribes the form of ballot now required for elections. [See ¶ 176 § 14.

56. Form of cumulative ballot.] § 54. In voting for representatives to the General Assembly, if the voter intends to give more than one vote to any candidate, he shall express his inten-

The township authorities have no power to establish their polling places when more than one is required. That can be done only by the county board. *Williams v. Potter*, 114 Ill., 628.

Where an election held in a town was void, the legislature has no power under the Constitution, to pass a law making the same valid. *Marshall et al. v. Silliman et al.*, 61 Ill. R., 218.

(1) The usual form of proclamation of opening and closing the polls is as follows:

Hear ye: hear ye: hear ye, the polls of this election are now open; or, the polls of this election will be closed in thirty minutes.

(2) Neither a heading nor the signature of the inspectors or clerks were required to make the poll list admissible, to prove that a person voted. *People v. Pease*, 27 N. Y. (13 Smith) R., 45.

tion on the face of the ballot, in words or figures, which may be done in either of the following forms: A B, C D, E F, which shall be held to mean one vote for each candidate named; or A B, 1½ votes, C D 1½ votes; or A B 2 votes; C D 1 vote; or A B 3 votes. [This Act is amended and repealed by § 17 of the Act of June 22, 1891, which prescribes how ballots for representatives in General Assembly, shall be counted. [See ¶ 179, § 17, ¶ 180, § 2.]

57. **Manner of receiving and depositing ballot.]** § 55. The ballot shall be folded by the voter and delivered to one of the judges of election; and if the judges be satisfied that the person offering the vote is a legal voter, the clerks of election shall enter the name of the voter, and his number, under the proper heading in the poll books, and the judges shall indorse on the back of the ticket offered the number corresponding with the number of the voter on the poll books, and shall immediately put the ticket into the ballot box. [See ¶ 185, § 22, ¶ 186, § 23—which amends this section.]

58. **No adjournment or recess.]** § 56. After the opening of the polls no adjournment shall be had, nor shall any recess be taken, until all the votes cast at such election shall have been counted and the result publicly announced.¹

59. **Clerks of election.]** § 57. Immediately upon closing the polls, the judges shall proceed to canvass the votes polled. They

Inspectors or judges of elections are merely ministerial officers, and their action can be reviewed by the courts. *People v. Pease*, 27 N. Y. (13 Smith) R., 45.

Where the provisions of the election law have been entirely disregarded by the officers and their conduct has been such as to render their returns utterly unworthy of credit, the entire poll will be rejected. But even in such case, legal votes proved to have been actually polled, must be computed. *Littlefield v. Green*, 1 Legal News, 330. See 1 Brewster (Penn.), 60.

The name of the person for whom the elector intends to vote should be written in full upon his ballot. It is held in Michigan, under the like provisions as in the text, that a ballot for J. A. Dyer cannot be counted for James A. Dyer; that such a ballot does not contain the name of the person intended to be voted for, but merely the initial letters; and no evidence is admissible to show that such a ballot was intended for James A. Dyer. But when, however, the designation of an individual on a ballot is by an abbreviation sanctioned by common usage, and universally understood, the ballot may be counted for the person for whom it was intended. Thus, a vote for Jas. A. Dyer may be counted for James A. Dyer. A slight error in the spelling of a name on a ballot, it is presumed would not prevent a ballot from being counted for the person for whom it was evidently intended. *People v. Tisdale*, 1 Dougl. (Mich.) R., 50; *People v. Higgins*, 3 Mich. R., 233; *Carpenter v. Ely*, 4 Wis. R., 420.

Ballots cast for Michael Finegan, being of the same sound, it was held should have been counted for Michael Finnegan, the person intended. *Finnegan v. Mayworm*, 5 Mich. R., 146.

Under the law authorizing the election of two court commissioners, an election was held, but it was conducted, in all respects, as if only one was to be chosen; two persons were opposing candidates, and each elector voted for one of the two, but in no instance did a ballot contain more than one name for this office. It was held that only the one receiving the highest number of votes was chosen, and as to the other there was a failure to elect. *People v. Commissioners of Kent Co.*, 11 Mich. R., 111.

(1) Where the judges of an election took a recess of an hour for dinner, and it was not for any improper purpose and no fraud or wrong of any sort was committed, this was held not sufficient grounds for rejecting the entire vote of the township. *The Board of Supervisors v. The People ex rel.*, 65 Ill. R., 360.

shall first count the whole number of ballots in the box. If two or more ballots are folded together so as to appear to have been cast by the same person, all of the ballots so folded together shall be marked and returned with the other ballots in the same condition, as near as may be, in which they were found when first opened, but shall not be counted. If the remaining ballots shall be found to exceed the number of names entered on each of the poll lists, they shall reject the ballots, if any be found upon which no number is marked; if the number of ballots still exceeds the number of names entered on each of the poll lists, said ballots shall be replaced in the box, and the box closed and well shaken and again opened and one of the judges shall publicly draw out and destroy so many ballots unopened as shall be equal to such excess; and the number of the ballots agreeing with the poll lists, or being made to agree, the board shall then proceed to count and estimate and publish the votes; and when the judges of the election shall open and read the tickets, each clerk shall carefully and correctly mark down upon the tally lists the votes each candidate has received, in a separate column prepared for that purpose, with the name of such candidate at the head of such column, and the office designated by the votes such candidate shall fill.² The votes shall be canvassed in the room or place where the election is held, and the judges shall not allow the ballot box, or any of the ballots, or either of the poll lists, or either of the tally papers to be removed or carried away from such room or place, until the canvass of the votes is completed, and the returns carefully enveloped and sealed up as provided by law. [As amended by Act approved June 22, 1885. In force July 1, 1885. The mode of canvassing the votes of elections is now conducted under the "Australian Ballot Act." Law of June 22, 1891. See ¶ 190, § 27, ¶ 202, § 1.

60. Irregular ballots.] § 58. If more persons are designated for any office than there are candidates to be elected, or if more votes or parts of votes are designated on any ballot for representatives than the voter is entitled to cast, such part of the ticket shall not be counted for either of the candidates. [See "Australian Ballot Act," Laws of June 22, 1891, ¶ 189, § 26.

61. Ballots strung and returned—When destroyed.] § 59. All the ballots counted by the judges of election shall, after being read, be strung upon a strong thread or twine, in the order in which they have been read, and shall then be carefully enveloped

(2) The ballots cast at an election are better evidence than the tally list made from them of the number of votes. *People v. Holden*, 28 Cal R., 123.

Where one Joseph Talkington was a candidate for constable, and ballots were cast for "Talkington," held that they should be counted for Joseph Talkington. *Talkington v. Turner*, 71 Ill. R., 235.

and sealed up by the judges, who shall direct the same to the officer to whom by law they are required to return the poll books, and shall be delivered, together with the poll books, to such officer, who shall carefully preserve said ballots for six months, and at the expiration of that time shall destroy them by burning, without the package being previously opened: *Provided*, if any contest of election shall be pending at such time in which such ballots may be required as evidence, the same shall not be destroyed till such contest is finally determined. [See "Australian Ballot Act," law of June 22, 1891, ¶ 190, § 27.]

62. Examination of Ballot in contested election.] § 60. In all cases of contested election, the parties contesting the same shall have the right to have the said package of ballots opened, and said ballots referred to by witnesses for the purpose of such contest. But said ballot shall only be so examined and referred to in the presence of the officer having the custody thereof. [See "Australian Ballot Act," Law June 22, 1891, ¶ 190, § 27.]

63. Form of return.] § 61. When the votes shall have been examined and counted, the clerks shall set down in their poll books the name of every person voted for, written at full length, the office for which such person received such votes, and the number he did receive, the number being expressed in words at full length; such entry to be made, as nearly as circumstances will admit, in the following form, to-wit:

At an election held at ———, in the county of ———, and State of Illinois, on the ——— day of ———, in the year of our Lord one thousand nine hundred and ———, the following named persons received the number of votes annexed to their respective names, for the following described offices, to-wit: [*name of candidate*] and [*number of votes*] for [*title of office*], [*and in the same manner for any other person voted for*]. Certified by us,

A. B., }
C. D., } *Judges of election.*
E. F., }

Attest: G. H., }
I. J., } *Clerks of election.*

64. Returns to be made to county clerk, etc.—Canvass, etc.—Requirements as to lists forwarded to Secretary of State.] § 62. One of the lists of voters, with such certificate written thereon, and one of the tally papers footed up so as to show the correct number of votes cast for each person voted for, shall be carefully enveloped and sealed up, and put into the hands of one of the judges of election, who shall, within twenty-four hours thereafter, deliver the same to the county clerk, or his deputy, at the office of said county clerk, who shall safely keep the same. Another of the lists of voters, with such certificate written thereon, and

another of the tally papers footed up as aforesaid, shall be carefully enveloped and sealed up and duly directed to the secretary of State, and, by another of the judges of election, deposited in the nearest postoffice within six hours after the completion of the canvass of the votes cast at such election, which poll book and tally list shall be filed and kept by the secretary of State for one year, and certified copies thereof shall be evidence in all courts, proceedings and election contests. Another of the lists of voters, with such certificates written thereon, and another of the tally papers footed up as aforesaid, shall be carefully enveloped and sealed up and delivered by the third one of the judges, without delay, in counties under township organization, to the town clerk of the town in which the district may be; and in counties not under township organization, they shall be retained by one of the judges of election, and safely kept by said town clerk or judge, for the use and inspection of the voters of such district until the next general election. Before said returns are sealed up, as aforesaid, the judges shall compare said tally papers, footings and certificates and see that they are correct and duplicates of each other, and certify to the correctness of the same: *Provided, that the lists of voters and tally papers required by this Act to be forwarded to the secretary of State, shall be transmitted in envelopes furnished to the various county clerks by the secretary of State for that purpose. Said envelopes shall bear the name and address of the secretary of State, printed in plain legible type, together with a blank form printed in convenient shape for designating the county and voting precinct or district where it is to be used, and also the words "poll book and tally list only," and the date of the election for which they are to be used. Said envelopes, printed as aforesaid, shall be forwarded by the secretary of State to the various county clerks, in the same manner in which registration books are now sent, and in ample time for each general election. And it shall be the duty of the county clerk of each county, upon receipt of said envelopes to properly fill out the blank form on one copy of same for each voting precinct or district in his county, according to the list of precincts forwarded by him in pursuance of law, to the office of the secretary of State. Said county clerks shall attach to each of said envelopes, sufficient stamps to fully prepay the postage on the list of voters and tally paper which it is to contain. Said envelopes, properly filled out and stamped as aforesaid, shall be distributed by the various county clerks to the election officers entitled to receive them, together with their regular quota of other election supplies. [As amended by Act approved May 15, 1903. In force July 1, 1903. Laws 1903, p. 175.*

65. **Compensation of judges and clerks.]** § 63. All judges and clerks of election, in counties of the first and second class shall be allowed the sum of three (\$3) dollars per day for their services, and judges and clerks of elections in counties of the third class the sum of five (\$5) dollars each per day for their services. [As amended by Act approved June 24, 1895. In force July 1, 1895. Laws 1895, p. 173.]

66. **Challengers.]** § 64. The judges of election shall allow at least one, and not more than two legal voters of each party to the contest, to be chosen by the parties respectively, into the room where the election is held, to act as challengers of voters at such election; and such challengers may remain with the board of election until the votes are all canvassed and the result declared.

QUALIFICATION OF VOTERS.

- 67. Who may vote.
- 68. Residence.
- 69. When inmates of Poor-houses, Asylums, etc., may vote.
- 70. Inmates of Soldiers' and Sailors' Homes.
- 71. Affidavit of qualification.
- 72. Affidavit of witness.
- 73. Who may administer oath.
- 74. Convicts—disqualification.

67. **Who may vote.]** § 65. Every person having resided in this State one year, in the county ninety days, and in the election district thirty days next preceding any election therein, who was an elector in this State on the first day of April, in the year of our Lord, 1848, or obtained a certificate of naturalization before any court of record in this State prior to the first day of January, in the year of our Lord, 1870, or who shall be a male citizen of the United States, above the age of twenty-one years, shall be entitled to vote at such election.¹

(1) Each State has the undoubted right to prescribe the qualifications of its own voters in the absence of some provision to that effect, the Act of naturalization would not of itself confer on the person naturalized the right to exercise the elective franchise. The qualification of a voter at a Congressional election depends on the law of the State in which the elective franchise is exercised, and is dependent on the municipal regulations of the State. *Spragins v. Houghton*, 2 Scan. R., 395. Former decisions to the foregoing effect, must of course be taken subject to the provisions of the fifteenth amendment to the Constitution of the United States.

Unless the legislature shall make citizenship an indispensable qualification to the enjoyment of the elective franchise, and the Constitution clearly admits of the exercise of that power by that body, the supreme court cannot add such a prerequisite by construction. *Spragins v. Houghton*, 2 Scam. R., 409.

The undergraduates of a college, who are free from parental control, and regard the place where the college is situated as their home, having no other home to return to in case of sickness or domestic affliction, are as much entitled to vote as any other resident of the town pursuing his usual avocation. It is *pro hac vice*, the home of such students. Their permanent abode, in the sense of the statute. *Dale v. Irwin*, 78 Ill. R., 170.

68. Residence.] § 66. A permanent abode is necessary to constitute a residence within the meaning of the preceding section.¹

Wilkins v. Marshall, 80 Ill., 74; Dale v. Irwin, 78 Ill., 170; City of Beardstown v. City of Virginia, 76 Ill., 34; Melvin et al. v. Lisenby et al., 72 Ill., 63.

The question whether the person offering to vote is a naturalized foreigner or an inhabitant, and entitled to vote, the judges of election have no right to investigate, under the existing laws. If such person takes the oath prescribed in the law, the duty is imperative upon the judges to receive his vote unless the oath is proved to be false. Spragins v. Houghton, 2 Scam. R., 416. If, however, the judge should of his own knowledge know the oath to be false, he would not be liable to the penalty under the law should he refuse to receive the vote for that reason. Mills et al. v. McCabe, 44 Ill. R., 194.

(1) The 'permanent abode' prescribed by the statutes as the criterion of the residence required to constitute a legal voter, means nothing more than a domicile, a home, which the party is at liberty to leave as interest or whom may dictate, but without any present intention to change it. Dale v. Irwin, 78 Ill. R., 170.

The term inhabitant is derived from the Latin *habito*, and signifies live in, to dwell in; and is applied exclusively to one who lives in a place, and has there a fixed and legal settlement. The residence, however, is to be *bona fide*, and not casual or temporal. Spragins v. Houghton, 2 Scam. R., 396.

The residence is a question of intention from all the facts and circumstances in each case. Kitchell v. Burgwin et ux., 21 Ill. R., 44; Ives v. Mills, 37 Ill. R., 75; Waltus v. The People, 21 Ill. R., 174, 178.

Residence and habitancy are generally synonymous. A residence is different from a domicile, although it is a matter of great importance to determine the place of domicile. Residence indicates permanency of occupation, as distinct from lodging, or boarding, or temporary occupation, but does not include so much as domicile, which requires an intention continued with residence. Bouv. Law Dict., "Residence."

A domicile may be defined "a residence at a particular place, accompanied with positive or presumptive proof of continuing it an unlimited time," and is a conclusion of law on an extended view of facts and circumstances. Grier v. O'Daniel, 1 Binn. R., 352.

A resident is a person coming into a place with an intention to establish his domicile or permanent residence, and actually executing that intention by taking a home or lodging, opening a store or the like. United States v. The Penelope, 2 Peters Adm. R., Dec. 450.

Residence is a question of intention. By a removal out of the State without an intention permanently to reside elsewhere, a person will not lose his residence, nor will he acquire one by a mere intention to remove permanently, not followed by actual removal. The fact of voting at a particular place is very strong evidence of the voter's intention to claim a domicile at the place of voting. McCrary's Election Laws, § 34. Cascy's Case, 1 Ash. R., 126. But a person having a permanent home in one town within the State, and being a legal voter in such town, is not necessarily disqualified by a temporary absence in another town, and being there admitted to vote. Lincoln v. Hapgood, 11 Mass. R., 350. McCrary's Election Laws, § 34.

To effect a change of domicile there must be intention and act united. 2 Kent Com., 43; Crawford v. Wilson, 4 Barb. R., 504. It is not enough that one intends to change it, and believes he has done in law what amounts to a change. The intent and fact must concur, and his opinion cannot produce the result. Chalne v. Wilson, 8 Abbott's Pr., 78; Smith v. People ex rel., 44 Ill. R., 22.

If a person goes out of a State, county or town, for a particular purpose, and does not take up a permanent residence elsewhere, he cannot be considered as having removed from the State, county or town, so as to affect his domicile and inhabitancy. Sears v. City of Boston, 1 Metc. R., 250; Sacket's Case, 1 Mass. R., 58; Abington v. Boston, 4 Mass. R., 312.

The temporary absence of a person or his family though extending over a series of years, does not necessarily, without regard to his intentions, make him lose his residence or deprive him of his rights as an elector. Harbaugh v. Cicott, 33 Mich. R., 241.

A man's domicile is not changed by an absence for a temporary purpose, with or without his family. Cadwalader v. Howell, 3 Harr. R., 138; State v. Judge, 13 Al. R., 805.

A person's home or domicile is his habitation fixed in any place, without any present intention of removing therefrom. Putnam v. Johnson, 10 Mass. R., 488.

A domicile once fixed will continue notwithstanding the absence of the party, until a new domicile is acquired. Jennison v. Hapgood, 10 Pick. R., 77.

A domicile once acquired is presumed to continue until a new one is obtained, in fact and by intention. Glover v. Glover, 18 Ala. R., 365.

Unless one's change of domicile is complete and final, it does not constitute an abandonment of one's country. Hardy v. DeLeon, 6 Texas R., 211; Brown v. Smith, 11 Eng. Law and Eq., 6; Leech v. Pillsbury, 15 N. Hamp. R., 137.

69. When inmates of poor houses, asylums, etc., may vote.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That no pauper or inmate of any county poor house, insane asylum or hospital in this State, shall by virtue of his abode at such county poor house, insane asylum or hospital be deemed a resident or legal voter in the town, city, village or election district or precinct in which such poor house, insane asylum or hospital may be situated; but every such person shall be deemed a resident of the town, city, village or election district or precinct in which he resided next prior to becoming an inmate of such county poor-house, insane asylum or hospital.¹

70. Inmates of Soldiers' and Sailors' homes.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That every honorably discharged soldier or sailor who shall have been an inmate of any soldiers' and sailors' home within the State of Illinois for ninety days or longer, and who shall have been a citizen of the United States and resided in this State one year, in the county where any such home is located ninety days, and in the election district thirty days next preceding any election shall be entitled to vote in the election district in which any such soldiers' and sailors' home in which he is an inmate thereof as aforesaid, is located, for all officers that now are or hereafter may be elected by the people, and upon all questions that may be submitted to the vote of the people: *Provided*, that he shall declare upon oath, if required so to do by any officer of election in said district, that it was his bona fide intention at the time he entered said home to become a resident thereof. [See ante ¶ 32, § 30.]

71. Affidavit of qualification.] § 67. Whenever, at any general or special election, in any precinct, district, city, village, town or ward. any person offering to vote is not personally known to the judges of election to have the qualifications mentioned in the two preceding sections, if his vote is challenged by a legal voter at such election, he shall make and subscribe an affidavit in the following form, which shall be retained by the

Every person has a domicile of origin, which he retains until he acquires another, and the one thus acquired is in like manner retained. *Thorndike v. City of Boston*, 1 Metc. R., 242; *Kilburn v. Bennett*, 3 Metc. R., 199.

A person having a legal settlement in one place, that settlement continues until another is acquired in the State. A settlement in another State or county will not change that acquired in this State, if he returns to it. *Payne v. Town of Dunham*, 29 Ill. R., 129.

(1) An Act to prevent illegal voting by paupers and others in this State. Approved May 25, 1877. In force July 1, 1877. Laws 1877, p. 144.

A party does not forfeit his residence in a precinct in which he was a voter merely by becoming a county charge and an inmate of the poor-house. *Dale v. Irwin*, 78 Ill. R., 170.

judges of election, and returned by them with the poll books:

State of Illinois, }
County of ———, } ss.

I, ———, do solemnly swear [*or affirm*] that I am a citizen of the United States, [*or, "that I was an elector on the first day of April, A. D. 1848."* *or, "that I obtained a certificate of naturalization before a court of record in this State prior to the first day of January, A. D. 1870," as the case may be*], that I have resided in this State one year, in this county ninety days, and in this election district thirty days next preceding this election; that I now reside at [*here give the particular house or place of residence, and if in a town or city, the street and number*], in this election district; that I am twenty-one years of age, and have not voted at this election; so help me God, [*or, "this I do solemnly and sincerely affirm," as the case may be*].

Subscribed and sworn to before me, this — day of ———, A. D. 19—.

72. Affidavit of witness.] § 68. In addition to such an affidavit the person so challenged shall produce a witness, personally known to the judges of election, and resident in the precinct (or district), or who shall be proved by some legal voter of such precinct or district, known to the judges to be such, who shall take the oath following, viz:

I do solemnly swear [*or affirm*] that I am a resident of this election precinct [*or district,*] and entitled to vote at this election, and that I have been a resident of this State for one year last passed, and am well acquainted with the person whose vote is now offered; that he is an actual and *bona fide* resident of this election precinct [*or district*], and has resided herein thirty days, and, as I verily believe, in this county ninety days, and in this state one year next preceding this election.

[As amended by Act approved May 24, 1877. In force July 1, 1877, Laws 1877, p. 100.]

73. Who may administer oath.] § 69. The oath in each case, may be administered by either of the judges of election, or by any officer, resident in the precinct or district, authorized by law to administer oaths.

74. Convicts—Disqualifications.] § 70. No person who has been legally convicted of any crime, the punishment of which is confinement in the penitentiary, or who shall be convicted and sentenced under Section Eighty-three of this Act shall be permitted to vote at any election, unless he shall be restored to the right to vote by pardon, or by the expiration of the term of his disfranchisement under Section Eighty-three of this Act. [As amended by Act approved June 17, 1887. In force July 1, 1887. Laws 1887, p. 173.]

CANVASSING VOTES—CERTIFICATE OF ELECTION.

- 75. Canvassing votes—abstracts.
- 76. Certificates of election.
- 77. Tie vote.
- 78. Drawing lot—certificates.
- 79. Compensation of judges and clerks.

- 80. Abstracts sent to secretary of state.
- 81. How abstracts sent.
- 82. Canvass by secretary of state, etc.—Commision, etc.,—Proclamation.

75. Canvassing votes—Abstracts.] § 71. Within seven days after the close of the election, the county clerks of the respective counties, with the assistance of two justices of the peace of the county, shall open the returns and make abstracts of the votes in the following manner, as the case may require:

Of votes for Governor and Lieutenant Governor, on one sheet; of votes for State officers, on another sheet; of votes for Presidential Electors, on another sheet; of votes for United States Senators and Representatives to Congress, on another sheet; of votes for Judges of the Supreme Court, on another sheet; of votes for Clerk of the Supreme Court, on another sheet; of votes for Judges of the Circuit Court, on another sheet; of votes for Senators and Representatives to the General Assembly, on another sheet; of votes for Members of the State Board of Equalization, on another sheet; of votes for Trustees of the University of Illinois, on another sheet; of votes for Amendments to the Constitution, and for other propositions submitted to the electors of the entire State, on another sheet; of votes for county officers and for propositions submitted to the electors of the county only, on another sheet. The foregoing abstracts shall be preserved by the county clerk in his office. [As amended by Act approved June 25, 1913. In force July 1, 1913. Laws 1913, p. 308.]

When the vote of an election district is rejected by the county canvassers, because no poll-list with the oath of the judges of election accompanied the statement of voters made up and returned to the proper officers, the statement being regular in all other respects, and delivered by and to the proper officers within the time prescribed by law, the testimony of the town clerk, in a proceeding testing the regularity of the election, is competent to show by the records kept in his office, that the election was regularly notified and conducted, and that the votes were ascertained and canvassed according to law, and also to show the number of votes cast for the different candidates. The chairman of the town board, whose vote is rejected for the above reasons, is a proper witness to show that he acted as one of the judges of election, that the judges were duly sworn before the polls were opened, and that the election was conducted according to the statute. *Attorney General ex rel. Carpenter v. Ely*, 1 Wis. R., 420.

Although the person who received the greatest number of votes for a particular office is ineligible to that office, such votes are not thereby a nullity, but should be counted by the canvassers; and the person who received a less number of votes in such case, although eligible, cannot be regarded as elected. *Dunning ex rel., etc., v. Giles*, 1 Chand. (Wis.) R., 112. *Off ex rel., etc., x. Smith*, 14 Wis. R., 497.

The county canvassers have no power not expressly given them by law. They must perform their duties precisely as prescribed by the statute, and can not go beyond it. And this relates to State and town canvassers. *Bresnford ex rel., etc., v. Bruston*, 4 Wis. R., 567. Canvassers are mere ministerial officers; it is their duty simply to cast up the votes and determine the result; they have no judicial power. *State v. Seers*, 44 Mo. R., 223.

Dickey et al v. Reed et al., 78 Ill., 261; *Talkington v. Turner*, 71 Ill., 234.

Notwithstanding the judges and clerks of elections may not be sworn, and no list of electors is kept, as required by law, and other irregularities have occurred, it is the duty of the county board to canvass the returns, and their certificate is *prima facie* evidence of the result of the election. *Taylor v. Taylor et al.*, 10 Minn. R., 107.

The determination, by the canvassers, of the right of the person elected, is not conclusive, but merely *prima facie* evidence of that person's right to the office, and may be overcome by the party who denies such right. *Territory v. Pyle*, 1 Oregon R., 149.

76. Certificates of election.] § 72. The county clerk shall make out a certificate of election to each of the persons having the highest number of votes, for the several county offices, and deliver such certificate to the person entitled to it, on his application.¹

Where no contest is entered, the county canvassers can only declare the result of the election, as shown by the certificate and returns of the judges of the election. They do not pass upon the qualification of voters, nor decide what ballots shall be counted. *The people ex rel., etc., v. Kilduff*, 15 Ill. R., 492. Indeed it is held, in a later case, that the office of canvasser is merely ministerial, and, as such, will be controlled by the courts; that these officers are clothed with no discretionary powers. They are to open the returns, make abstracts of the votes as they appear, and the clerk is to deliver a certificate of election to each person having the highest number of votes. They are not allowed to reject any returns, or decide upon their validity, if on their face, they are made in compliance with the law. *The People ex rel., etc., v. Hilliard*, 29 Ill. R., 423; *People v. Vancleve*, 1 Mich. R., 362. A different rule obtains in Wisconsin under a statute admitting of a different construction. *Attorney General ex rel. Carpenter v. Ely*, 4 Wis. R., 420.

The justices of the peace, as members of the canvassing board, possess equal power with the county clerk. After the board adjourn their power is at an end, and they can not be again called together; and no amendment of their proceedings can be made. *Opinion Att'y Gen'l Cole (Minn.)*, vol. 1, p. 145.

When the board of canvassers have legally canvassed the returns of election, and declared the result, their power over the subject is exhausted, and they can not afterward reverse their decision by making a different determination. *Headly v. Albany*, 33 N. Y. R., 603.

Where an informality occurs in making election returns, it may no doubt be corrected by the canvassers, and should not be allowed to operate to disfranchise the voters. *The People ex rel., etc., v. Hilliard*, 29 Ill. R., 414.

In an information in the nature of a quo warranto to test the fact of election between the parties claiming the same, the court is bound to rectify mistakes and omissions of the canvassing boards. *Attorney General ex rel. Carpenter v. Ely*, 4 Wis. R., 420.

The legality of an election does not depend upon the fact of the declaration of the board of election, or that of the canvassers, if withheld or not made, through illegal causes, the office will vest; the authority, rights and powers of officers are derived from the election, and not from the returns. *The People ex rel., etc., v. Kilduff*, 15 Ill. R., 492.

The accidental loss of ballots, and affidavits made at the election in a particular precinct, affords no ground for rejecting the entire return from such precinct. *Beardstown v. Virginia*, 76 Ill. R., 35.

Where the signature of the officers who administered the oaths attached to the jurats of a poll book did not appear, and for that reason the poll book was rejected by the canvassers and a certificate given to the opposite party, the rejection of the poll book causing a change in the result: Held, that the writ of mandamus was the only remedy of the defeated party to compel the delivery to him of the certificate of election, as the prima facie evidence of his election. *The people ex rel., etc., v. Hilliard*, 29 Ill. R., 413.

A court of chancery has no power to restrain, by injunction, a board of canvassers from canvassing the returns of an election, where the law under which the election was held, neither in terms or by implication confers such power, and when there are no facts before the court which require it to take judicial cognizance and hear and adjudicate and decree. *Dickey et al. v. Reid*, 78 Ill. R., 261.

(1) The duties of the county clerk in receiving and opening election returns, in canvassing and estimating the votes, and in giving certificates of election, are purely ministerial, and no judicial or discretionary powers are conferred upon him or the board of canvassers, except, perhaps, that of determining whether the returns are genuine, or polled at proper places, and ascertaining from the returns themselves for whom the votes were intended. *O'Farrell & Bryant v. Colby*, 2 Minn. R., 180.

The duty of the clerk in issuing a certificate of election to the person having the highest number of votes is purely ministerial, and a mandamus will be granted to compel him to issue such certificate. *State v. Lawrence*, 3 Kan. R., 95.

The certificate of election is prima facie title to the office, and can only be set aside by a contest in the form prescribed by law. *Prettyman v. Supervisors et al.*, 19 Ill. R., 406; *Kerr v. Trego*, 47 Penn. St. R., 292.

When no certificate or other formal mode of making known to a person his election to a public office is required by law, the result of the election, as ascertained and announced at the close, is conclusive upon the election of officers, and cannot afterward be reconsidered or varied. *State v. Warren*, 1 Houston (Del.) R., 39.

77. Tie vote.] § 73. When two or more persons receive an equal and the highest number of votes for an office to be filled by the county alone, the county clerk shall issue a notice to such persons of such tie vote, and require them to appear at his office, on a day named in the notice, within ten days from the day of election, and determine by lot which of them is to be declared elected.

78. Drawing lots—Certificates.] § 74. On the day appointed the clerk and other canvassers, or, in case of their absence, the State's attorney or sheriff, shall attend, and the parties interested shall appear and determine by lot which of them is to be declared elected; and the clerk shall issue his certificate of election to the person thus declared elected.

79. Compensation of judges and clerks.] § 75. It shall be the duty of the county clerk, on the receipt of the election returns of any general or special election, to make out his certificate, stating the compensation to which the judges and clerks of each election may be entitled for their services, and lay the same before the county board at its next session; and said board shall order the compensation aforesaid to be paid out of the county treasury. [See ¶ 65, § 63.]

In a proceeding by quo warranto to try the right to an office elective by the people, it is competent to go behind the certificate to ascertain the decisive fact of who received the most legal votes. (Denio, C. J., and Wright and Marvin, justices, dissenting.) *People v. Pease*, 27 N. Y. (13 Smith) R., 45.

The supreme court has no power to decide upon the right of a party to hold a seat in the legislature, but it may compel the proper officers to give the proper credentials to enable the party to assert his claim before the proper authority. The award of a certificate to either candidate under the mandate of the court will not determine his election. *O'Farrell & Bryant v. Colby*, 2 Minn. R., 180; *The People ex rel. v. Hilliard*, 29 Ill. R., 413.

Mandamus lies to compel the clerk to make out and deliver the certificate of election. *People ex rel. v. Hilliard*, 29 Ill. R., 413. And to compel the announcement of the result of the canvass. *People ex rel. v. Salomon*, 46 Ill. R., 415.

The right to an office dependent on an election by the people, is to be determined by the number of legal votes received at the election, and not by the certificate of election, nor by the governor's commission. *Ex-parte Reed*, 50 Ala. R., 439.

The decision of the canvassers of an election affords prima facie evidence of the legal election of the person found to have received a plurality of the votes cast, and unless his title to the office is contested in some mode known to the law, he will be entitled to the office for the term for which he was elected. *People ex rel. Evans v. Callaghan*, 83 Ill. R., 128.

Our institutions rest upon the principle that the controlling power is vested in the majority; and in the absence of any provision of law to the contrary, the will of any corporation or other community is properly declared only by the voice of the majority. *State v. Fagan*, 42 Conn. R., 33.

A person elected to a county office, although he receives no official notice of his election, must qualify within the time prescribed by law. The neglect or refusal of the county clerk to make out his certificate of election, in compliance with the statute, will not impair his title to the office. *Spooner ex rel. v. Elderkin*, 5 Wis. R., 300.

Officers elected on the proper day, refusing to qualify, become officers de facto, and their acts are valid as to third persons, and can only be inquired into directly, not collaterally. *Coles County v. Allison*, 23 Ill. R., 437. See *People v. Collins*, 7 Johns. R., 549; *People v. Runkle*, 9 Johns. R., 147.

Mandamus is the proper remedy against any officer to obtain possession of seals, books, papers, muniments, or other property belonging to corporations. *The People ex rel. Brewster & Jones v. Kilduff*, 15 Ill. R., 502.

80. Abstract sent to Secretary of State.] § 76. Immediately after the completion of the abstracts of votes, the county clerk shall make two correct copies of the abstracts of votes for Governor, Lieutenant Governor, Secretary of State, Auditor of Public Accounts, Treasurer, Attorney General and Superintendent of Public Instruction, both of which said copies he shall envelope and seal up, and endorse upon the envelopes in substance, "Abstracts of votes for State Officers from _____ county"; and he shall address one of the envelopes containing said copies of abstracts of votes for State Officers to "the Speaker of the House of Representatives," and the other he shall address to "the Secretary of State." The county clerk shall, at the same time, envelope and seal up a copy of each of the abstracts of votes for other officers and amendments to the Constitution and other propositions voted on, and indorse the same so as to show the contents of the package, and address the same to the Secretary of State. The several packages shall then be placed in one envelope and addressed to the Secretary of State. [As amended by Act approved April 24, 1899. In force July 1, 1899. Laws 1899, p. 208.]

81. How abstracts sent.] § 77. Such abstracts shall be transmitted to the Secretary of State by mail, or, in case it shall be necessary, by special messenger.

82. Canvass by Secretary of State, etc.—Commission, etc.—Proclamation.] § 78. The Secretary of State, Auditor, Treasurer, and Attorney General, or any two of them in the presence of the Governor shall proceed within twenty days after the election, and sooner if all the returns are received, to canvass the votes given for United States Senators and Representatives to Congress, Judges of the Supreme Court, Clerk of the Supreme Court, Judges of the Circuit Court, Senators, Representatives to the General Assembly, Members of the State Board of Equalization and Trustees of the University of Illinois, respectively, and the persons having the highest number of votes for the respective offices, shall be declared duly elected; but if it appears that more than the number of persons to be elected have the highest and an equal number of votes for the same office, the Secretary of State, in the presence of the other officers and the Governor, shall decide by lot which of such persons shall be elected; and to each person duly elected, the Governor shall give a certificate of election or commission, as the case may require, and shall cause proclamation to be made of the result of the canvass, and they shall at the same time and in the same manner, canvass the vote cast upon amendments to the Constitution, and upon other propositions

submitted to the electors of the entire State; and the Governor shall cause to be made such proclamation of the result of the canvass as the statutes elsewhere provide. [As amended by Act approved June 25, 1913. In force July 1, 1913. Laws 1913, p. 308.]

OFFENSES AND PENALTIES.

- 83. Liquor.
- 84. False swearing.
- 85. Illegal voting.
- 86. Other offenses.
 - (1) Abetting illegal voting.
 - (2) Deceiving voter.
 - (3) Fraudulently changing ballot.
 - (4) Unlawfully influencing voter.
 - (5) Offering to bribe voter, etc.
 - (6) Bribing voter.
 - (7) Bribing, etc., judge or clerk.
- 87. Receiving, requesting, etc., bribe, etc.—upon second offense.
- 88. Disorderly conduct.
- 89. Betting on election.
- 90. Offenses of judge of election.
- 91. When judge or clerk ascertains or discloses vote.
- 92. When other person ascertains or discloses vote.
- 93. Neglect of duty by clerk.
- 94. Failure to deliver poll books, etc.
- 95. Neglect of duty by county clerk.
- 96. Fraud in canvassing, etc.
- 97. Carrying away, defacing, etc., poll books, etc.
- 98. Refusal of supervisor, etc., to act—Penalty.

83. Liquor.] § 79. No spirituous, malt, vinous or intoxicating liquor shall be sold or given away at retail, nor shall any saloon or bar room, or place where such liquor is so sold or given away, be open upon any general or special election day within one mile of the place of holding an election. Whoever violates the provisions of this section shall be fined in a sum not less than \$25 nor more than \$100. It shall be the duty of the sheriff, coroner, constables and other officers of the county, and magistrates, to see that the provisions of this section are enforced.

84. False swearing.] § 80. If any person whose vote is challenged, or any witness sworn under the provisions of this Act, shall knowingly, wilfully and corruptly, swear falsely, he shall be deemed guilty of perjury, and on conviction thereof shall be punished accordingly.

85. Illegal voting.] § 81. Whoever unlawfully votes more than once at any election, or offers to vote after having once voted at such election, or knowing that he is not a qualified voter at an election, wilfully votes at such election, shall, on conviction,

tion thereof, be fined in a sum not exceeding \$1,000, or imprisoned in the county jail not exceeding one year, or both, in the discretion of the court.¹

86. Other offenses.] § 82. Whoever wilfully aids or abets any one not legally qualified to vote at an election in voting or attempting to vote at such election; or

Second—Furnishes an elector with a ticket or ballot informing him that it contains a name different from that which appears thereon, with intent to induce him to vote contrary to his inclinations; or

Third—Changes a ballot of an elector, with intent to deprive such elector of voting for such person as he intended; or

Fourth—By unlawful means prevents or attempts to prevent any voter from attending or voting at an election; or

Fifth—Gives, or offers to give, any valuable thing or bribe to any judge or clerk of an election, as a consideration for some act to be done or omitted to be done contrary to his official duty in relation to such election, shall on conviction thereof be fined in a sum not exceeding \$1,000, or imprisoned in the county jail not exceeding one year, or both, in the discretion of the court. And any judge or clerk who shall receive, request or demand any bribe or reward forbidden by this Act, shall upon conviction, be liable to the same penalties as are prescribed in this Act for the giving or offering to give such bribe or reward. [As amended by Act approved June 17, 1887. In force July 1, 1887. Laws 1887, p. 173.]

87. Receiving, requesting, etc., bribe, etc.—Upon second offense.] § 83. Any person who shall solicit, request, demand or receive, directly or indirectly, any money, intoxicating liquor or other thing of value, or the promise thereof, either to influence his vote, or to be used, or under the pretense of being used to procure the vote of any other person or persons, or to be used at any poll or other place prior to or on the day of an election for or against any candidate for office, or for or against any measure or question to be voted upon at such election, shall be deemed guilty of the infamous crime of bribery, in elections, and upon conviction thereof in any court of record, shall be sentenced to disfranchisement by the judge of such court for a term of not

(1) The poll lists are the highest and best evidence of who voted at an election, and when; and when it does not appear from them that the defendant voted in his real name, or in the name by which he is indicted, or that there is a name on the poll list representing the ballot cast by him, there can be no conviction for illegal voting. *Wilson v. State*, 52 Ala. R., 299.

A minor who is otherwise duly qualified, cannot be convicted of illegal voting because he was not of the requisite age, if he voted under the honest belief, induced by information from parents, relatives, or acquaintances having knowledge of the time of his birth, that he had obtained his majority. *Gordon v. State*, 52 Ala. R., 308.

less than five nor more than fifteen years, and to the county jail not less than three months nor more than one year, and to pay the cost of prosecution and stand committed to the county jail until such costs shall be fully paid. That for a conviction of a second offense under this section, the first being alleged and proven, such second offender shall be by the sentence of the court forever thereafter disfranchised and deprived of the right to vote at an election in this State, and be imprisoned in the county jail not less than one year, and be committed to jail in default of payment of costs of prosecution until such costs are fully paid. Prosecutions may be had under this section by indictment in the circuit court, or by information in the county courts, and the effect of a sentence of disfranchisement in either of said courts, both having jurisdiction of offenses hereunder, shall be to deprive such persons sentenced of the right to vote at any general or special election, or town meeting, within this State for the period of time fixed by the court where such person shall be convicted under this section. Any candidate or other person paying, furnishing or promising to pay or furnish or bribing such person, with money, intoxicating liquor or other thing of value, or the promise thereof, shall not be liable to punishment therefor but shall be a competent witness and compelled to testify in prosecutions under this section. Solicitation by any person of a loan of money, or the purchase of any thing of value, or of liquor by the drink or treat to influence or affect his vote, or any other subterfuge, shall be deemed a violation hereof.

Second—Any person who shall have been legally convicted and disfranchised by a court of competent jurisdiction who shall before the expiration of his term of disfranchisement, vote or offer to vote at any general or special election, or town meeting within this State, shall, upon indictment and conviction thereof in a court of competent jurisdiction, be confined in the penitentiary for a term of years not less than one, nor more than ten years.¹ [As amended by Act approved June 17, 1887. In force July 1, 1887. Laws 1887, p. 172.]

88. Disorderly conduct.] § 84. Whoever is disorderly at any election shall forfeit a sum not exceeding \$25.

89. Betting on election.] § 85. Whoever bets or wagers any money, property or other valuable thing, upon the result of an election which may be held under the Constitution or laws of this State, or bets or wagers money, property, or other valuable thing, upon the number of votes which may be given to any

(1) It is an indictable misdemeanor to propose to receive a bribe by an alderman of a city council or by any public officer, inciting another to the commission of any indictable offense, though without success, is a misdemeanor. *Walsh v. The People*, 65 Ill. R., 58; *Christie v. People*, 206 Ill., 337.

person at an election, or upon who will receive the greatest number of votes at an election; or agrees to pay any other person any money, property, or other valuable thing, in the event that an election shall result in one way, or in the event that any person shall or shall not be elected, or shall receive a greater number of votes than others, upon conviction thereof he shall be fined in a sum not exceeding \$1,000, or imprisoned in the county jail not exceeding one year, or both, in the discretion of the court.¹ [See Revised Statutes, chapter 38, § 132.

90. Offenses of judge of election.] § 86. If any judge of any election shall permit a person to vote whose vote is challenged, without the proof required in this Act; or,²

(1) The voting of electors of this State, for a president of the United States, is an election held under the laws of this State, and a bet or wager as to the result of such vote, is a wager on the result of an election under the statute. *McClurken v. Detrich et al.*, 33 Ill. R., 349. See *Gordon v. Casey*, 23 Ill. R., 71; *Stephens v. Sharpe*, 26 Ill. R., 404.

The election law, concerning betting on elections, is intended to apply to the election of presidential electors, as well as to that of State officers; and bets made on such elections are void. *Gordon v. Casey*, 23 Ill. R., 70.

A wager on the result of the electoral vote for president of the United States, in this State, is void, as against public policy, by the common law. *Allen v. Hearne*, 1 Tenn. R., 57. *Bunn v. Riker*, 4 Johns. R., 426; *Bush v. Keeler*, 5 Wend. L., 250; *Morgan v. Pettit*, 3 Scam. R., 531; *Gordon v. Casey*, 23 Ill. R., 71; *Stephens v. Sharpe*, 23 Ill. R., 404; *McClurken v. Detrich et al.*, 33 Ill. R., 350.

A bet or wager on the result of an election in this State, whether made before or after the election, would be illegal, as against good policy. *Morgan v. Pettit*, 3 Scam. R., 531.

A wager as to the result of a presidential election, in another State, made after the vote has been cast, is not against public policy, *Smith v. Smith*, 21 Ill. R., 244.

The law prohibiting betting on elections applies only to elections in this State, and does not extend to those made concerning elections to be held in other States; therefore, a bet or wager between two citizens of this State, upon the majority which General Harrison would obtain at the presidential election in the State of Kentucky, is not illegal; and an action can be maintained by the winner to recover the amount of the wager. *Morgan v. Pettit*, 3 Scam. R., 531.

Where B. and L. purchased a piece of cloth at a store on credit, and at the time of the purchase a memorandum was made as follows: "If Mr. Douglas is elected to Congress, Brown is to pay for the cloth; if Mr. Stewart is elected, James Lurton has it to pay." Held, that the contract was in severalty. Held, also, that the contract for the sale of the cloth was valid; and was not tainted by the bet of B. and L. *Lurton v. Gilliam et al.*, 1 Scam. R., 579.

At common law all wagers are recoverable, but such as are prohibited by statute; such as are against sound policy; and such as tend to a breach of the peace, to immorality, or indecency, or injuriously affect the rights of third persons. *Morgan v. Pettit*, 3 Scam. R., 530.

A stakeholder, unless some other mode has been provided, is the proper person to decide who has won a wager. *Smith v. Smith*, 21 Ill. R., 244. The court concurs with the case of *Ethron v. Kingsman*, 4 Eng. Com. Law R., 625.

A note for money, payable if "Abraham Lincoln receives the electoral vote of the State of Illinois," is a bet on election, and void on its face. *Gordon v. Casey*, 23 Ill. R., 71; *Guyman v. Burlingame*, 36 Ill. R., 201.

It seems a court of equity will not decree the specific performance of a contract, the consideration of which is a wager upon an election held under the law of this State. *McClurken v. Detrich et al.* 33 Ill. R., 349.

(2) It is only when the judge of election allows the exercise of the elective franchise by one whose right he suspects, or whose vote is challenged, without tendering the required oath, that the judge violates the law. *Spraigins v. Houghton*, 2 Scam. R., 377.

An election officer is not criminally liable for a mere mistake of judgment, but only for a willful disregard of duty; when indicted for rejecting a vote, the presumptions are in his favor. *Commonwealth v. Lee*, 1 Brewster (Penn.), 273.

An action on the case will not lie against the inspectors of election for refusing the vote of a qualified elector, unless on proof of malice, express or implied. *Jenkins v. Waldron*, 11 Johns, N. Y. R., 114.

2d. Shall knowingly and wilfully permit a person to testify as a witness contrary to the provisions of this Act; or,

3d. Shall knowingly permit a person to vote who is not qualified according to law; or,

4th. Shall knowingly receive and count more than one vote from the same person at the same election for the same office, except as allowed by law; or,

5th. Shall refuse to receive the vote of a qualified elector at such election, who will make the affidavit and proof required by this Act; or,

6th. Shall be guilty of any fraud, corruption, partiality or manifest misbehavior; or,

7th. Shall open or unfold any ballot when the same is presented to be deposited in the ballot box; or,

8th. Shall wilfully neglect to perform any of the duties required of him by this Act, shall, on conviction thereof, be fined in a sum not exceeding \$1,000, or imprisoned in the county jail not exceeding one year, or both, in the discretion of the court.

91. When judge or clerk ascertains or discloses vote.] § 87. If any judge or clerk of election shall wilfully or corruptly ascertain, by comparison of the poll book with the ballot, or shall allow any other person to ascertain by such comparison or otherwise, or shall wilfully publish or reveal how any elector voted at an election, he shall, on conviction thereof, be fined in any sum not exceeding \$1,000, or imprisoned in the county jail not exceeding one year, or both, in the discretion of the court.

92. When other person ascertains or discloses vote.] § 88. If any person shall wilfully or corruptly ascertain or publish, or reveal how any elector voted at an election, he shall, on conviction thereof, be fined in any sum not exceeding \$1,000, or imprisoned in the county jail not exceeding one year, or both, at the discretion of the court.

93. Neglect of duty by clerk.] § 89. If any clerk of an election shall wilfully neglect to perform any duty required of him as clerk of election, or shall be guilty of fraud, corruption or misbehavior as such clerk, he shall, on conviction, be fined in a sum not exceeding \$500, or imprisoned in the county jail not exceeding six months, or both, in the discretion of the court.

94. Failure to deliver poll books, etc.] § 90. If any judge, clerk or messenger, after having been deputed by the judges of

Election officers are generally punishable by indictment, for knowingly receiving the vote of one who is not a duly qualified elector. *State v. Roll*, 7 West, L. J., 138. *State v. McDonald*, 4 Harrington, 555.

Fraud, when imputed to the acts of inspectors of election, implies an illegal and wrongful act, purposely committed. *People v. Cook*, 8 N. Y. R., 67.

election to carry the poll books, tally list and votes of such election to the place where, by law, they are required to be canvassed, wilfully or negligently fails to deliver such poll books, tally list, or ballots, within the time prescribed by law, with the seal unbroken, he shall, upon conviction, be fined in a sum not exceeding \$500, or imprisoned in the county jail not exceeding six months, or both, in the discretion of the court.

95. Neglect by county clerk.] § 91. If the county clerk wilfully neglects or refuses to perform any duty required of him by this Act, he shall, upon conviction, be fined in a sum not exceeding \$500, and shall be liable to the person injured by reason of such neglect or refusal, in an amount not exceeding \$500, to be recovered in an action on the case.

96. Fraud in canvassing, etc.] § 92. If any county clerk or justice of the peace shall be guilty of any fraud, corruption or misbehavior, in canvassing the votes or making any abstract of votes, or issuing any certificate of election, he shall, on conviction, be fined in any sum not exceeding \$500, or imprisoned in the county jail not exceeding one year, or both, in the discretion of the court.

97. Carrying away, defacing, etc., poll books, etc.] § 93. Whoever shall wilfully and wrongfully take or carry away from the place where it has been deposited for safe-keeping, or deface, mutilate or change any poll book, ballot or tally list, or any name or figure therein, shall, on conviction, be fined in a sum not exceeding \$1,000, or imprisoned in the county jail not exceeding one year, or both, in the discretion of the court.

98. Refusal of supervisor, etc., to act—Penalty.] § 93½. If any supervisor, county commissioner or member of any county board shall wilfully refuse, neglect or fail to do any act or perform any duty required of him by the election laws of this State, he shall be deemed guilty of a misdemeanor, and upon conviction, fined not exceeding five hundred dollars, or imprisoned in the county jail not exceeding, six months or both in the discretion of the court. [Added by Act approved June 22, 1885. In force July 1, 1885.]

CONTESTING ELECTIONS.

99. When legislature to hear.
100. Senators and representatives.
101. By circuit court.
102. By circuit and in Cook county also by the superior court.
103. By county court.
104. Election of state officers—Petition of contestant.
105. Joint committee to take testimony.

106. Powers of joint committee.
107. Notice.
108. Testimony.
109. Report of committee—Hearing—Decision.
110. Who may contest senator or representative.
111. Notice of contest.
112. Testimony—How taken.
113. Power of officer taking testimony.
114. Depositions, etc., to be sent to secretary of state.
115. Delivery of notice of contest, etc.—Duty of presiding officer.
116. Rights of either house saved.
117. Who may contest election of other officers.
118. Contestant to file statement, etc.
119. Summons.
120. Evidence.
121. Trial.
122. Other elections contested.
123. When elector may defend for county.
124. Judgment.
125. Tie.
126. Certified copy of judgment.
127. When election adjudged void.
128. Appeals.

99. When legislature to hear.] § 94. The legislature, in joint meeting, shall hear and determine cases of contested elections of Governor and Lieutenant Governor, Secretary of State, Auditor of Public Accounts, Treasurer, Superintendent of Public Instruction, and Attorney General. The meeting of the two houses, to decide upon such elections, shall be held in the hall of the house of representatives, and the speaker of the house shall preside. [See Const., Art. 5, § 4.

100. Senators and representatives.] § 95. The senate and house of representatives shall severally hear and determine contests of the election of their respective members. [See Const., Art. 4, § 9.

101. By Circuit Court.] § 96. The Circuit Court shall hear and determine contests of the election of Judges of the Supreme Court, Clerks of the Supreme Court, Judges of the Circuit Court, Judges of the Superior Court of Cook county, and Members of the State Board of Equalization; but no Judge of the Circuit Court shall sit upon the hearing of any case in which he is a party. [As amended by Act approved April 22, 1899. In force July 1, 1899. Laws 1899, p. 152.

102. By circuit courts, and in Cook county also by the superior court.] § 97. The circuit courts in the respective counties, and in Cook county the Superior Court also may have and determine contests of the election of judges of the county court,

mayors of cities, presidents of county boards, presidents of villages, in reference to the removal of county seats and in reference to any other subject which may be submitted to the vote of the people of the county, and concurrent jurisdiction with the county court in all cases mentioned in section ninety-eight (98). [As amended by Act approved June 17, 1895. In force July 1, 1895. Laws 1895, p. 170.]

103. By county court.] § 98. The county court shall hear and determine contests of election of all other county, township and precinct officers, and all other officers for the contesting of whose election no provision is made.¹

104. Election of state officers—petition of contestant.] § 99. When any elector shall desire to contest the election of Governor, Lieutenant Governor, Secretary of State, Auditor of Public Accounts, Treasurer, Superintendent of Public Instruction, or Attorney General, he shall, within ten days after the result of the election shall have been determined, present a petition to the General Assembly, setting forth the points on which he will contest such election, and praying leave to produce his proof.

105. Joint committee to take testimony.] § 100. The General Assembly shall appoint a joint committee to take the testimony on the part of the petitioner, and the person whose place is contested.

106. Powers of joint committee.] § 101. The committee so appointed shall have power to send for witnesses, and compel the attendance of witnesses and the production of papers, issue commissions under the hand of its chairman, to any officer authorized to take depositions in other cases, to take the deposition of witnesses upon the points set forth in the petition, at such time and place as the commission shall direct.

107. Notice.] § 102. Reasonable notice shall be given by the party in whose favor the deposition is to be taken, to the opposite party, of the time and place of taking the same.

108. Testimony.] § 103. No testimony shall be taken except upon the points set forth in the petition.

109. Report of committee—Hearing—Decision.] § 104. The committee shall report the facts to the house, and a day shall be fixed by a joint resolution for a meeting of the two houses to decide upon the same, in which decision the yeas and nays shall be taken and entered upon the journal.

110. Who may contest senator or representative.] § 105.

(1) Dickey et al. v. Reed et al., 78 Ill., 267; Brush v. Lemma, 77 Ill., 496; Talkington v. Turner, 71 Ill., 234.

The election of any member declared duly elected to a seat in the senate or house of representatives of the General Assembly, may be contested by any qualified voter of the county or district to be represented by such senator or representative.

111. Notice of contest.] § 106. The contestant shall, within thirty days after the result of the election shall have been determined, serve on the person whose election he will contest, a notice of his intention to contest such election, expressing the points on which the same will be contested; and shall, also, on or before the next session of the General Assembly, deliver a copy of such notice to the Secretary of State. In case the person whose election is contested is absent, or cannot be found, service may be had by leaving a copy of such notice at his usual place of residence.¹

112. Testimony—How taken. § 107. Whenever a notice shall have been given of intention to contest an election, as provided in the preceding section, either party may proceed to take testimony of any witness before any judge, justice of the peace, clerk of a court, master in chancery, or notary public, on giving to the adverse party or his attorney, ten days' notice of the time and place of taking the same, and one day in addition thereto (Sunday inclusive) for every fifty miles' travel from the place of residence of such party to the place where such deposition is to be taken. If the party entitled to notice resides in the county where the deposition is to be taken, five days' notice shall be sufficient.

113. Power of officer taking testimony.] § 108. The officer before whom depositions are taken shall have power to compel the production of papers, and the attendance of witnesses; and the same proceedings may be had to compel the attendance of witnesses, as are provided in the cases of taking depositions to be used in courts of law and equity.

114. Deposition, etc., to be sent to Secretary of State.] § 109. A copy of the notice to take depositions, with proof of the service thereof, with the deposition, shall be sealed up and transmitted by mail, or otherwise, to the Secretary of State, with an indorse-

(1) The object of requiring the "points" of contest to be stated, is for the purpose of informing the adverse party of the grounds of contest, so that he may prepare to meet them. Each party is therefore required, when he becomes the actor, to give notice of the specific grounds on which he intends to contest the election, or the correctness of the returns or canvass. *Taylor v. Taylor et al.*, 10 Minn. R., 107.

A court of chancery has no jurisdiction to enquire into the validity of elections. Nor will such jurisdiction be conferred by the mere omission of the particular case from the operation of the general law on the subject of contested elections. *Moore v. Hoisington et al.*, 31 Ill. R., 243.

ment thereon, showing the names of the contesting parties, the office contested, and the nature of the papers.

115. Delivery of notice of contest, etc.—Duty of presiding officer.] § 110. The Secretary of State shall deliver the copy of the notice deposited with him by the contestant and the depositions unopened, to the presiding officer of the branch of the General Assembly to which the contest relates, on or before the second day of its session next after the receipt of the same; and the presiding officer shall immediately give notice to his house that such papers are in his possession.

116. Rights of either house saved.] § 111. Nothing herein contained shall be construed to abridge the right of either branch of the General Assembly to grant commissions to take depositions, or to send for and examine any witnesses it may desire to hear on such trial.

117. Who may contest election of other officers.] § 112. The election of any person declared elected to any office other than Governor, Lieutenant Governor, Secretary of State, Auditor of Public Accounts, Treasurer, Superintendent of Public Instruction, Attorney General, Senator or Representative, may be contested by any elector of the State, judicial division, district, county, town, or precinct in and for which the person is declared elected.

118. Contestant to file statement, etc.] § 113. The person desiring to contest such election shall, within thirty days after the person whose election is contested is declared elected, file with the clerk of the proper court a statement in writing, setting

The person who holds a certificate from the authorities appointed by law to canvass the votes, declaring him elected to an office, and who has complied with the requirements of law in relation to the office, is entitled to the present possession thereof, notwithstanding the prior incumbent contests his election, denying its legality. Such contest is not an appeal, but is an original proceeding under our statutes, going behind the poll books, and purging the election. *The People ex rel. Cummings v. Head*, 25 Ill., 325.

It is competent for the court and jury to go behind the certificate of the canvassers, for the purpose of determining who was legally elected to a contested office. *Carpenter v. Ely*, 4 Wis. R., 420.

On the trial of a contested election, the members returned as elected, though sworn in, are not competent to vote on the question of the validity of their own election. *Commonwealth v. McCloskey*, 2 Rawle (Penn.), 369.

A petition complaining of an undue election and return, must set forth the facts with precision; and they must be sufficient, if sustained by proof, to render it the duty of the court, either to vacate the election, or to declare that another person than the one returned was duly elected. Unless the petition be thus specific, and set forth facts that, if true, would have changed the result, it will be quashed, on motion. Mere irregularities on the part of the election officers, will not vitiate the poll. *Skerrett's Case*, 2 Parsons (Penn.), 509; see also 8 N. Y. R., 67.

The question whether a voter was or was not duly qualified, is not concluded by the decision of the inspectors; it is open to examination, in subsequent proceedings, upon any competent evidence. *People v. Pease*, 27 N. Y. R., 45.

The title to an office confers upon the person elected a right to the fees and emoluments thereof from the commencement of his legal term. An action for money had and received will lie by the officer de jure, against one who has intruded into the office, by color of a certificate of election, to cover the fees received during the time of such intrusion. If the incumbent received his commission bona fide, he will be allowed, in such action, his reasonable expenses in executing the duties of the office; otherwise, if his intrusion were without pretense of legal right. *Mayfield v. Moore*, 53 Ill. R., 428.

forth the points on which he will contest the election, which statement shall be verified by affidavit in the same manner as bills in chancery may be verified.¹

119. Summons.] § 114. Upon the filing of such statement, summons shall issue against the person whose office is contested and he may be served with process, or notified to appear, in the same manner as is provided in cases in chancery.

120. Evidence.] § 115. Evidence may be taken in the same manner and upon like notice as in cases in chancery.

121. Trial.] § 116. The case shall be tried in like manner as cases in chancery, and may be heard and determined by the court in term time, or by the judge in vacation, at any time not less than ten (10) days after service of process, or at any time after the defendant is required by notification to appear, and shall have preference in the order of hearing to all other cases. The court in term time or the judge in vacation may make and enforce all necessary orders for the preservation and production of the ballots, poll books, tally papers, returns, registers and other papers or evidence that may bear upon the contest. [As amended by Act approved June 17, 1895. In force July 1, 1895. Laws 1895, p. 170.]

122. Other elections contested.] § 117. Any five electors of the county may contest an election upon any subject which may by law be submitted to a vote of the people of the county, upon filing in the circuit court, within thirty days after the result of the election shall have been determined, a written statement in like form as in other cases of contested elections in the circuit court. The county shall be made defendant, and process shall be served as in suits against the county; and like proceedings shall be had as in other cases of contested elections before such court.

123. When elector may defend for county.] § 118. In case the county board shall fail or refuse properly to defend such contest, the court shall allow any one or more electors of the county to appear and defend, in which case the electors so defending shall be liable for the costs in case the judgment of the court shall be in favor of the contestant.

124. Judgment.] § 119. The judgment of the court, in cases of contested election, shall confirm or annul the election according to the right of the matter; or, in case the contest is in relation to the election of some person to an office, shall declare as elected the person who shall appear to be duly elected.

125. Tie.] § 120. If it appears that two or more persons have, or would have had if the legal ballots cast or intended to be

(1) Dale v. Irwin, 78 Ill. 170,

cast for them had been counted, the highest and an equal number of votes for the same office, the persons receiving such votes shall decide by lot, in such manner as the court shall direct, which of them shall be declared duly elected; and the judgment shall be entered accordingly.

126. Certified copy of judgment.] § 121. A certified copy of the judgment of the court shall have the same effect as to the result of the election as if it had been so declared by the canvassers.

127. When election adjudged void.] § 122. When the person whose election is contested is found to have received the highest number of legal votes, but the election is declared null by reason of legal disqualification on his part, or for other causes, the person receiving the next highest number of votes shall not be declared elected, but the election shall be declared void.¹

128. Appeal.] § 123. In all cases of contested elections in the circuit courts or county courts, appeals may be taken to the supreme court in the same manner, and upon like conditions as is provided by law for taking appeals in cases in chancery from the circuit courts.²

RESIGNATIONS AND VACANCIES.

- 129. Resignation of elective officers.
- 130. When office becomes vacant.
- 131. Who may determine when vacancy exists.
- 132. Vacancy in office of governor or lieutenant governor.
- 133. Vacancy in other state offices.
- 134. Vacancy in office of senator or representative.
- 135. Vacancy in office of representative in congress.
- 135a. Vacancy in office of United States senator.
- 136. Vacancy in office of judge.
- 137. Vacancy in office of clerk of court.
- 138. Vacancy in office of county and precinct officers, etc.
- 139. To what elections this act may apply.

129. Of Elective Officers.] § 124. Resignations of elective officers shall be made to the officer, court or county board authorized by law to fill a vacancy in such office by appointment, or to order an election to fill such vacancy.

130. When office becomes vacant.] § 125. Every elective office shall become vacant on the happening of either of the following events, before the expiration of the term of such office:

First—The death of the incumbent.

Second—His resignation.

(1) If the person receiving the highest number of votes is not qualified to take the office, the candidate having the next highest number is not legally elected. Cooley on Const. Limitations, 620. Opinion Att'y Gen'l Edsall, April 4, 1873.

(2) Hall v. Thode, 75 Ill., 173.

Third—His becoming insane.

Fourth—His ceasing to be an inhabitant of the State; or, if the office is local, his ceasing to be an inhabitant of the district, county, town or precinct for which he was elected.

Fifth—His conviction of an infamous crime, or of any offense involving a violation of official oath.

Sixth—His removal from office.

Seventh—His refusal or neglect to take his oath of office, or to give or renew his official bond, or to deposit or file such oath or bond within the time prescribed by law.

Eighth—The decision of a competent tribunal declaring his election void.

131. Who may determine when vacancy exists.] § 126. Whenever it is alleged that a vacancy in any office exists, the officer, court, or county board whose duty it is to fill the vacancy by appointment, or to order an election to fill such vacancy, shall have power to determine whether or not the facts occasioning such vacancy exist.

132. Vacancy in office of Governor and Lieutenant Governor.] § 127. In case of vacancies in the office of Governor and Lieutenant Governor, the officer performing the duties of the office of Governor, or if there is no such officer, the Secretary of State, shall issue a proclamation appointing a day for a special election to fill such vacancies, and shall issue a writ of election to the county clerks of the several counties in the State, and shall also, when necessary, call a special session of the General Assembly to canvass the votes cast at such election; but if such vacancy shall occur not more than ninety days before a general election for members of the legislature, the vacancies shall be filled at such general election, in which case no special session of the General Assembly to canvass the votes shall be deemed necessary.

133. Vacancy in other State officers.] § 128. When a vacancy shall occur in the office of Secretary of State, Auditor of Public Accounts, Treasurer, Attorney General, Superintendent of Public Instruction or members of the State Board of Equalization, the Governor shall fill the same by appointment, and the appointee shall hold his office during the remainder of the term, and until his successor is elected and qualified. [See Const., art. 5, § 20.]

134. Vacancy in office of Senator or Representative.] § 129. When a vacancy shall occur in the office of Senator or Representative in the General Assembly, it shall be the duty of the county clerk of the county in which the member whose office is vacant resided, to notify the Governor of such vacancy. Whereupon the Governor

shall issue a writ of election to the county clerk or clerks of the county or counties in which the vacancy is to be filled, fixing a day upon which an election shall be held to fill such vacancy; but unless the General Assembly shall be in session at the time the vacancy occurs, or there shall be a session between the time at which the vacancy occurs and the next succeeding general election, no special election shall be ordered to fill such vacancy.

135. Vacancy in office of Representatives in Congress.]

§ 130. When any vacancy shall occur in the office of Representative in Congress from this State, the Governor shall issue a writ of election to the county clerks of the several counties in the district where the vacancy exists, appointing a day to hold a special election to fill such vacancy.

135a. Vacancy in the office of United States Senator.]

§ 130a. When a vacancy shall occur in the office of United States Senator from this State, the Governor shall make temporary appointment to fill such vacancy until the next election of representatives in Congress, at which time such vacancy shall be filled by election, and the Senator so elected shall take office as soon thereafter as he shall receive his certificate of election. [Added by amendment by Act approved June 25, 1913. In force July 1, 1913. Laws 1913, p. 307.]

136. Vacancy in office of Judges.] § 131. When a vacancy shall occur in the office of judge of the supreme court, judge of the circuit court, judge of the superior court of Cook county, or judge of the county court, the clerk of the court in which the vacancy exists shall notify the Governor of such vacancy. If such vacancy shall occur within one year before the expiration of the term of the office made vacant, the Governor shall fill such vacancy by appointment; but if the unexpired term exceeds one year, the Governor shall issue a writ of election, as in other cases of vacancies to be filled by election.

137. Clerks of courts.] § 132. When a vacancy shall occur in the office of clerk of the supreme court, or in the office of the clerk of the superior court, or clerk of the circuit court of any of the counties in this State, and the unexpired term of such clerk shall exceed one year, it shall be the duty of the court, or if in vacation, of the judge or judges of the court in which such vacancy may occur, to appoint a clerk *pro tempore*; and such appointee shall qualify in the same manner, and give bond as required by law of the clerk of the court to which he is appointed, to be approved by the court, or if in vacation by the judge or judges making the appointment; and thereupon such appointee shall be authorized to perform all duties and receive

all emoluments allowed by law to the duly elected clerk of such court, and shall hold such office until an election can be held to fill the same, as provided by the Act to which this is an amendment, and until the person so elected shall have qualified according to law. Whenever an appointment shall be made, as provided by this Act, it shall be the duty of the court or the judge or judges making such appointment, to notify the Governor forthwith of the vacancy filled by such appointment; and upon receiving such notice, it shall be the duty of the Governor, as soon thereafter as may be practicable, to issue a writ of election as in other cases of vacancies to be filled by election, in the same manner as if no appointment had been made; and when any such vacancy shall occur, and the unexpired term does not exceed one year, such vacancy shall be filled by appointment by the court to which such office appertains, or by the judge or judges thereof.]As amended by Act approved February 9, 1874. In force July 1, 1874. See Revised Stat., chap. 25, § 11.

138. County officers, precinct officers, etc.] § 133. When a vacancy shall occur in the office of county commissioner, State's attorney, sheriff, coroner, county clerk, recorder of deeds, county treasurer, county surveyor, justice of the peace, constable, or other county or precinct officer not otherwise provided for by law, within one year before the expiration of the term of such vacant office, the vacancy shall be filled by appointment, by the county board of the county in which the vacancy exists; but if such unexpired term exceeds one year, the county clerk, or, in case of a vacancy in his office, the chairman of the county board, shall issue an order appointing a day for an election to fill such vacancy, and cause notice thereof to be given as in other cases of election.

139. To what elections this Act may apply.] § 134. The provisions of this Act shall apply, as far as practicable, to all elections in the State, whether general, special, local or municipal, except so far as they are modified or contravened by other legal enactment.

[§ 135. **Repeal**, omitted; see Revised Statute, chap. 131, § 5.]

REGISTRATION OF ELECTORS.

AN ACT for the registry of electors and to prevent fraudulent voting.
[Approved and in force February 15, 1865. Laws 1865, p. 54.]

- 140. Board of registration—meeting—register.
- 141. Manner of making register, etc.—First meeting.
- 142. New election districts.
- 143. Revision register—Second meeting.
- 144. Proceedings open—Corrections, etc.
- 145. Revising register—Addition of new names.
- 146. Copies of register—Filing—Delivery to judges—Voting.

147. Entry on register by clerk—non-registered voter—Penalty.
148. Poll list and register to be filed.
149. Registers open to inspection.
150. Compensation.
151. Preserving order.
152. Fraudulent registration—False swearing, etc.
153. Blanks to be furnished.
154. Time Act takes effect.

140. Board of registration—Meeting—Register.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That the persons authorized by law, or appointed pursuant to any town or city ordinance, to act as judges or inspectors of elections in any town, city, or ward or other election district or precinct in this State, shall constitute a 'Board of Registry' for their respective towns, cities, wards, districts or precincts, and shall meet on Tuesday, three weeks preceding any State election, at nine o'clock A. M., and proceed to make a list, as hereinafter prescribed, of all persons qualified and entitled to vote at the ensuing election in the election district of which they are judges or inspectors; which list, when completed, shall constitute and be known as the 'Register' of electors of said election district. In election districts in towns which lie wholly within the limits of an incorporated city, a register of electors shall be made for all elections, whether general, special, local or municipal, in the same manner as herein provided in the case of State elections.¹ [As amended by Act approved May 31, 1879. In force July 1, 1879. Laws 1879, p. 160.]

141. Manner of making register, etc.—First meeting.] § 2. Said registers shall each contain a list of the persons so qualified and entitled to vote in said election district, alphabetically arranged, according to their respective surnames, so as to show, in one column, the name in full length, and in another column, in cities, the residence, by the number of the dwelling, if there be a number, and the name of the street or other location of the dwelling place of each person. It shall be the duty of said board to enter in said lists the names of all persons residing in their election district, whose name appears on the poll list kept in said district at the last preceding election—in cities the number of the dwelling and the name of the street or other location, if the same shall be known to or can be ascertained by such

(1) Persons whose names are put upon the registry list, but who do not appear and vote at an election, are presumed to have left the election district, and therefore no longer voters therein. The registry list of voters is no better evidence of the number of legal voters in a district or county than the poll list. The vote cast is prima facie evidence of not only the result of the election, but also of the number of legal voters in the county. The registry lists do not rebut or overcome this presumption. *People ex rel. v. Garner*, 47 Ill. R., 247.

The Act of 1865, providing for the registry of electors, and to prevent frauds in elections, does not apply to elections held for the purpose of deciding upon the removal of a county seat. *Boren v. Smith et al.*, 47 Ill. R., 482.

board—and for this purpose said board are authorized to take from the office in which they are filed the poll lists made and filed by the judges or inspectors of such district, at the election held next prior to the making of such register. In making said list, the board shall enter thereon, in addition to the names on the poll list, the names of all other persons who are well known to them to be electors in said district; and the names of all persons on the poll list who have died or removed from the district shall be omitted from the register. The said board shall complete, as far as practicable, the said register on the day of their meeting, aforesaid, and shall make two copies thereof, and certify the register and each of the copies to be a true list of the voters in their district, so far as the same are known. Within two days thereafter, the said original list, together with the list taken from the office, as aforesaid, shall be filed by said board in the office of the town clerk of the town in which said election district may be; but in counties not adopting township organization, said list shall be filed with the judges or inspectors of election of the proper district, or if such election district is in a city then it shall be filed in the office of the city clerk of said city. And one copy of said list shall be kept by one of said judges or inspectors, and carefully preserved by him for their use on the day or days hereinafter mentioned, for the revision and correction of the same. One copy of said list shall, immediately after its completion, be posted in some conspicuous place where the last preceding election in said district was held, and be accessible to any elector who may desire to examine the same or make copies thereof. Any person who shall take down, tear down or deface any list, so posted, shall be deemed guilty of misdemeanor, and shall be punished by a fine of \$50, or by imprisonment in the county jail for the term of sixty days, or by both fine and imprisonment. [As amended by Act approved March 27, 1874. In force July 1, 1874.]

142. **New election districts.] § 3.** In case a new election district shall be formed by the organization of a new town, or by the division of any town or ward, or the incorporation of a city or town, the judges or inspectors of the election in the new district thus formed, may make their registry of electors on the day prescribed by this Act, in such manner as a majority of them may direct, and for that purpose may make a list, or cause to be made a certified copy of the poll list or lists of the district in which such new district is situated, or they may dispense with such list or lists and proceed to make a register of electors, from the best means at their command. Said list shall only embrace the names of such persons as are known to them to be electors in their district, and shall be posted up and copies thereof made,

as prescribed in the preceding section, and shall be corrected in the same manner that other lists are corrected.

143. Revision register—Second meeting.] § 4. The said board shall again meet on Tuesday of the week preceding the said elections, in their respective election districts, at the place designated for holding the polls of the election, for the purpose of revising, correcting and completing said lists; and for this purpose, in cities, they shall meet at eight o'clock in the morning, and remain in session until nine o'clock P. M., and in other districts they shall meet at nine o'clock in the morning and remain in session until four o'clock P. M. [As amended by Act approved March 27, 1874. In force July 1, 1874.

144. Proceedings open—Corrections, etc.] § 5. The proceedings of said board shall be open, and all persons residing and entitled to vote in said district shall be entitled to be heard by said board, in relation to corrections or additions to said register. One of the lists so kept by the judges or inspectors, as aforesaid, shall be used by them, on the day or days of making corrections or additions, for the purpose of completing the registry for such district.

145. Revising register—Addition of new names.] § 6. It shall be the duty of said board, at their meeting for revising and correcting said lists, to erase therefrom the name of any person inserted therein, who shall be proved by the oath of two legal voters of said district, to the satisfaction of said board, to be non-resident of said district, or otherwise not entitled to vote, in said district, at the election then next to be held. Any elector residing in said district, and entitled to vote therein, may appear before said board and require his name to be recorded on said alphabetical list. Any person so requiring his name to be so entered on said lists, shall make the same statement as to the street and number thereof, and where he resides, required by the provisions of this Act of persons offering their votes at elections, and shall be subject to the same penalties for refusing to give such information, or for falsely giving the same, and shall also be subject to challenge, either by the judges or inspectors, or either of them, or by any other elector whose name appears on said alphabetical list; and the same oaths may be administered by the judges or inspectors as now provided in case of persons offering to vote at an election; and in case no challenge is made of any person requiring his name to be entered on said alphabetical list, or in case of challenge, if such person shall make

(1) Where a person votes at an election without having been registered, and without any proof of right, if it does not appear he was challenged, or any objection made to his voting, the presumption must be that he was a legal voter, and so known to the judges. *Dale v. Irwin*, 78 Ill. R., 170.

oath that would entitle him to vote in case of challenge at an election, then the name of any such person shall be added to the alphabetical poll list of the last preceding year.¹

146. Copies of register—Filing—Deliver to judges—Voting—Swearing in vote, etc.] § 7. After said lists shall have been fully completed, the said board shall, within three days thereafter, cause two copies of the same to be made, each of which shall be certified by them to be a correct list of the voters of their district; one of which shall be filed in the office of the town clerk of towns, and in the office of city clerks of cities; and one of which copies shall be delivered to said judges or inspectors. It shall be the duty of the said judges or inspectors so receiving such list, carefully to preserve the said list for their use on election day, and to designate two of their number, at the opening of the polls, to check the name of every voter voting in such district whose name is on the register. No vote shall be received at any State election in this State, if the name of the person offering to vote be not on the said register made on the Tuesday preceding the election, unless the person offering to vote shall furnish to the judges of the election his affidavit, in writing, stating therein that he is an inhabitant of said district and entitled to vote therein at such election, and prove by the oath of a householder and registered voter of the district in which he offers to vote, that he knows such person to be an inhabitant of the district, and if in any city, giving the residence of such person within said district. The oath may be administered by one of the judges or inspectors of the election, at the poll where the vote shall be offered, or by any other person authorized to administer oaths, but no person shall be authorized to receive compensation for administering the oath. Said oath shall be preserved and filed in the office of the town or city clerk, or in case there be no clerk, then said oath shall be filed with and preserved by the judges or inspectors of the proper district. Any person may be challenged, and the same oaths shall be put as now are or hereafter may be prescribed by law.² [As amended by Act approved March 27, 1874. In force July 1, 1874.]

147. Entry on register by clerks—Non-registered voter—Penalty.] § 8. The clerks at each poll, in addition to the duties

(2) Under this Act, a person who has not been registered as a voter must not only show by his own affidavit that he is an inhabitant of the district in which he offered his vote, but he must, in addition, establish such fact by the affidavit of a "householder and registered voter" of such district. In such case the fact that the person so offering his vote was well known to the judges of the election, who knew that he resided in the district, and had previously been in the habit of voting therein, does not dispense with the proof required by the statute. The requirements of this Act, relative to the proof to be made by persons whose names have not been registered, are reasonable and within the scope of legislative power, and are not calculated to abridge the elective franchise. *Byler et al. v. Asher*, 47 Ill. R., 101.

now prescribed by law, shall enter on the poll list kept by them, in columns prepared for that purpose, opposite the name of each person voting, the same statement or minute as hereinbefore required of the board in making the registry; but such entry is not to be made by them if the registry contains correctly the name and residence of such voter; and in all cases said clerk shall enter in a column opposite the name of each person not registered, the words "not registered." In cities, every elector, at the time of offering his vote, shall truly state the street in which he resides, and if the house, lodging or tenement in which he resides is numbered, the number thereof. And the clerks of the polls, in case the name of such elector is not registered, shall truly enter in the appropriate column of the poll list, opposite the name of the elector, the street in which the elector resides, and the number, in case the house, lodging or tenement is numbered; and if the same is not numbered, then the clerk shall enter "not numbered" in the column of the poll list for entering the number. In case of refusal to make the statement as aforesaid, the vote of such an elector shall not be received. Any person who shall wilfully make any false statement in relation thereto, shall be deemed guilty of misdemeanor, and shall, upon conviction, be punished with a fine of \$50, or by imprisonment in the county jail in the county for a period of ten days, or by both such fine and imprisonment.

148. Poll list and register to be filed.] § 9. After the canvass of the votes, one of said poll list and said register so kept and checked, as aforesaid, shall be attached together, and shall, on the following day, be filed in the town or city clerk's office (as the case may be), in which said district may be, or in case there be no such clerk, then such poll list and register shall be filed with and preserved by the judges or inspectors, to be used by the board of registry in making the list of voters at the next state election; the other of said poll lists and registers, so kept and checked, shall be returned to the office of the county clerk in the county in which said district may be, at the same time the returns of the election are made. [As amended by Act approved March 27, 1874. In force July 1, 1874.]

[§ 10 is repealed by Act approved March 27, 1874.]

149. Registers open to inspection.] § 11. The registers shall at all times be open to public inspection, at the office of the authorities in which they shall be deposited, without charge.

150. Compensation.] § 12. That the members of the board of registration shall each receive \$2 per day for each day actually employed in making and completion of the registry, not exceed-

ing two days, to be paid to them at the time and in the manner in which they are paid their other fees. [As amended by Act approved March 27, 1874; in force July 1, 1874.

151. Preserving order.] § 13. The said board shall have and exercise the same power in preserving order at their meetings, under this Act, as are given to judges or inspectors of election for preserving order on election days; and vacancies in said board shall be filled in the same manner that vacancies are now filled at elections.¹

152. Fraudulent registration, false swearing, etc.] § 14. Any person who shall cause his name to be registered in more than one election district, or who shall cause his name to be registered, knowing that he is not a qualified voter in the district where said registry is made, or who shall falsely personate any registered voter, and any person causing, aiding or abetting any person, in any manner, in either of said acts, shall be punished, for each and every offense, by imprisonment in the state prison for not less than one year. All intentional false swearing before said board of registration shall be deemed willful and corrupt perjury, and, on conviction, punished as such. If any member or officer of said board shall wilfully violate any of the provisions of this Act, or be guilty of any fraud in the execution of the duties of his office, he shall be punished, for each and every offense, by imprisonment in the state prison for not less than one year.²

[§§ 15, 16 are repealed by implication, the Acts to which they refer being repealed. § 17 was only of temporary effect.]

153. Blanks to be furnished.] § 18. The necessary blanks for making the registers required by law, shall be prepared by the Secretary of State, and transmitted to the person entitled to receive them, in the same manner that blank returns of elections are now transmitted.

[§ 19 is repealed by implication, the Act to which it refers being repealed.]

154. Time Act takes effect.] § 20. This Act shall be in force from and after its passage.

(1) See ante, ¶ 46, § 44.

(2) Members of the board of registry are not liable to indictment for refusing to insert the name of a voter upon the list, if they act honestly and in the exercise of their best judgment. *State v. Smith*, 18 N. Hamp. R., 91.

And an information against the board of registry for refusing to put a voter's name on the list, should allege that they knew his right to vote. *State v. Daniels*, 44 N. Hamp. R., 383; *Lombard v. Oliver*, 7 Allen (Mass.) R., 155.

An action will not lie against the judge of an election for refusing the vote of a person who was not registered as a voter, and who failed to comply with the requirements of § 7 of the registry Act, relative to the proof to be made in such cases. Nor will the fact that such refusal was placed on grounds not tenable change their liability. *Byler et al. v. Asher*, 47 Ill. R., 101.

CONGRESSIONAL APPORTIONMENT.

AN ACT to apportion the State of Illinois into twenty-five congressional districts and to establish the same, and to provide for the election of representatives therein, and to repeal an Act therein named. [Approved May 13, 1901. In force July 1, 1901. Laws 1901, p. 3.]

155. Apportions State into twenty-five congressional districts.

156. Number of representatives in congress—When elected.

157. The words "ward" or "wards" in the city of Chicago defined.

158. Repeal.

155. Apportions State into twenty-five congressional districts.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That the State of Illinois be, and the same is hereby, apportioned into twenty-five Congressional districts, and that the same are hereby established and shall be respectively composed as herein set forth, to-wit:

The First district shall be composed of the First ward, the Second ward, that part of the Third ward east of the center line of Stewart avenue, that part of the Fourth ward lying east of the center line of Halsted street, that part of the Sixth ward north of the center line of Forty-third street, all in the city of Chicago.

The second district shall be composed of that part of the Sixth ward south of the center line of Forty-third street, the Seventh ward, the Eighth ward, and the Thirty-third ward, in the city of Chicago.

The Third district shall be composed of the towns of Lemont, Palos, Worth, Orland, Bremen, Thornton, Rich, Bloom and Calumet in Cook county, and that part of the Twenty-ninth ward south of the center line of Fifty-first street, that part of the Thirtieth ward south of the center line of Fifty-first street, the Thirty-first ward and the Thirty-second ward, in the city of Chicago.

The Fourth district shall be composed of that part of the Third ward lying west of the center line of Stewart avenue, that part of the Fourth ward lying west of the center line of Halsted street, the Fifth ward, that part of the Eleventh ward south of the center line of Twenty-second street, that part of the Twelfth ward lying south of the center line of Twenty-second street, that part of the Twenty-ninth ward north of the center line of Fifty-first street, and that part of the Thirtieth ward north of the center line of Fifty-first street, in the city of Chicago.

The Fifth district shall be composed of the Ninth ward, the Tenth ward, that part of the Eleventh ward north of the center line of Twenty-second street, and that part of the Twelfth ward

north of the center line of Twenty-second street, in the city of Chicago.

The Sixth district shall be composed of the towns of Proviso, Cicero, Riverside, Stickney and Lyons in Cook county, and the Thirteenth ward, the Twentieth ward, the Thirty-fourth ward, and that part of the Thirty-fifth ward south of the south line of the right of way of the Chicago and Northwestern Railway Company, in the city of Chicago.

The Seventh district shall be composed of the towns of Hanover, Schaumburg, Elk Grove, Maine, Leyden, Barrington, Palatine, Wheeling and Norwood Park in Cook county, the Fourteenth ward, that part of the Fifteenth ward west of the center line of Robey street, the Twenty-seventh ward, the Twenty-eighth ward, and that part of the Thirty-fifth ward north of the south line of the right of way of the Chicago and Northwestern Railway Company, in the city of Chicago.

The Eighth district shall be composed of that part of the Fifteenth ward east of the center line of Robey street, the Sixteenth ward, the Seventeenth ward, the Eighteenth ward and the Nineteenth ward, in the city of Chicago.

The Ninth district shall be composed of the Twenty-first ward, the Twenty-second ward, that part of the Twenty-third ward east of the center line of Halsted street, and that part of the Twenty-fifth ward south of the center line of Graceland avenue, in the city of Chicago.

The Tenth district shall be composed of that part of the Twenty-third ward west of the center line of Halsted street, the Twenty-fourth ward, that part of the Twenty-fifth ward north of the center line of Graceland avenue and the Twenty-sixth ward, in the city of Chicago, also the towns of Evanston, Niles, New Trier and Northfield, in Cook county, and the county of Lake.

The Eleventh district shall be composed of the counties of DuPage, Kane, McHenry and Will.

The Twelfth district shall be composed of the counties of Boone, DeKalb, Grundy, Kendall, LaSalle and Winnebago.

The Thirteenth district shall be composed of the counties of Carroll, JoDaviess, Lee, Ogle, Stephenson and Whiteside.

The Fourteenth district shall be composed of the counties of Hancock, Henderson, McDonough, Mercer, Rock Island and Warren.

The Fifteenth district shall be composed of the counties of Adams, Fulton, Henry, Knox and Schuyler.

The Sixteenth district shall be composed of the counties of Bureau, Marshall, Peoria, Putnam, Stark and Tazewell.

The Seventeenth district shall be composed of the counties of Ford, Livingston, Logan, McLean and Woodford.

The Eighteenth district shall be composed of the counties of Clark, Cumberland, Edgar, Iroquois, Kankakee and Vermilion.

The Nineteenth district shall be composed of the counties of Champaign, Coles, DeWitt, Douglas, Macon, Moultrie, Shelby and Piatt.

The Twentieth district shall be composed of the counties of Brown, Calhoun, Cass, Greene, Jersey, Mason, Menard, Morgan, Pike and Scott.

The Twenty-first district shall be composed of the counties of Christian, Macoupin, Montgomery and Sangamon.

The Twenty-second district shall be composed of the counties of Bond, Madison, Monroe, St. Clair and Washington.

The Twenty-third district shall be composed of the counties of Clinton, Crawford, Effingham, Fayette, Jasper, Jefferson, Lawrence, Marion, Richland and Wabash.

The Twenty-fourth district shall be composed of the counties of Clay, Edwards, Gallatin, Hamilton, Hardin, Johnson, Massac, Pope, Saline, Wayne and White.

The Twenty-fifth district shall be composed of the counties of Alexander, Franklin, Jackson, Perry, Pulaski, Randolph, Union and Williamson.

156. Number of representatives in Congress—When elected.] § 2. One representative to the Congress of the United States shall be elected in each of the districts before enumerated on the Tuesday after the first Monday of November in the year of our Lord one thousand nine hundred and two (1902), and one in each of said districts every two years thereafter; such election shall be held, and the returns thereof made and canvassed, in the manner provided by law.

157. The words "Ward" or "Wards" in the city of Chicago defined.] § 3. Whenever the words "ward" or "wards", in the city of Chicago, are used in this Act, they shall be construed as meaning the wards as existing in said city at the time of the passage of this Act.

158. Repeal.] § 4. An Act entitled "An Act to apportion the State of Illinois into twenty-two Congressional districts, and establish the same, and provide for the election of representatives therein," approved June 9, 1893, in force July 1, 1893, is hereby repealed.

SENATORIAL AND REPRESENTATIVE APPORTIONMENT.

AN ACT to apportion the State of Illinois into Senatorial districts, and to repeal certain Acts therein named. [Approved May 10, 1901. In force July 1, 1901. Laws 1901, p. 6.]

159. Apportions State into fifty-one senatorial districts.
160. The words "ward," "street," "avenue" and "boulevard" in the city of Chicago defined.
161. Repeal.

159. Apportions State into fifty-one senatorial districts.]
§ 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly:* That until the taking and return of the next Federal census and the apportionment thereunder, as provided in the Constitution, the State of Illinois shall be divided into Senatorial districts, each of which shall be entitled to one Senator and three Representatives, as follows, to-wit:

First—The First and Second wards in the city of Chicago, in the county of Cook, shall constitute the first district.

Second—That part of the Eleventh ward lying north of the center line of Sixteenth street; that part of the Twelfth ward lying north of the center line of Sixteenth street and east of the center line of California avenue, and the Twentieth ward in the city of Chicago, in the county of Cook, shall constitute the Second district.

Third—The Third ward, that part of the Fourth ward lying east of the center line of Halsted street, and that part of the Fifth ward bounded as follows: Beginning at the intersection of Thirty-third street and Union avenue, and running south along the center line of Union avenue to the center line of Thirty-fifth street, thence running east along the center line of Thirty-fifth street to the center line of Parnell avenue, thence running north along the center line of Parnell avenue to the center line of Thirty-third street, thence running west along the center line of Thirty-third street to the place of beginning, and that part of the Sixth ward lying north of the center line of Forty-third street, said center line being extended easterly to Lake Michigan, in the city of Chicago, in the county of Cook shall constitute the Third district.

Fourth—The Twenty-ninth and Thirtieth wards, and that part of the Thirty-first ward lying north of the center line of Fifty-seventh place and east of the east line of the right of way of the Chicago, Rock Island and Pacific Railway Company, in the City of Chicago, in the county of Cook, shall constitute the Fourth district.

Fifth—The Sixth ward, except that part thereof lying north of the center line of Forty-third street, said center line being extended easterly to Lake Michigan, and the Seventh ward, except that part thereof lying south of the center line of Sixty-third street, said center line being extended easterly to Lake Michi-

gan, and east of the center line of Cottage Grove avenue, in the city of Chicago, in the county of Cook, shall constitute the Fifth district.

Sixth—The Twenty-fourth ward, that part of the Twenty-fifth ward lying north of the center line of Devon avenue, that part of the Twenty-third ward lying west of the center line of Halsted street, and the Twenty-sixth ward in the city of Chicago; also all that part of the town of Evanston lying outside of the city of Chicago, and those parts of the towns of Niles and New Trier lying within the city of Evanston, all in the county of Cook, shall constitute the Sixth district.

Seventh—The towns of Thornton, Bloom, Rich, Bremen, Orland, Lemont, Palos, Worth, Lyons, Stickney, Proviso, Leyden, Elk Grove, Schaumburg, Hanover, Barrington, Palatine, Wheeling, Northfield, that part of the town of New Trier lying outside of the city of Evanston, that part of the town of Niles lying outside of the city of Chicago and outside of the city of Evanston, and those parts of the towns of Norwood Park and Maine, lying outside of the city of Chicago, all in the County of Cook, shall constitute the Seventh district.

Eighth—The counties of Lake, McHenry and Boone shall constitute the Eighth district.

Ninth—That part of the Fourth ward lying west of the center line of Halsted street, the Fifth ward, except that part bounded as follows: Beginning at the intersection of Thirty-third street and Union avenue and running along the center line of Union avenue to the center line of Thirty-fifth street, thence running east along the center line of Thirty-fifth street to the center line of Parnell avenue, thence running north along the center line of Parnell avenue to the center line of Thirty-third street, thence running west along the center line of Thirty-third street to the place of beginning, and that part of the Twelfth ward lying south and east of a line beginning at the intersection of Hoyne avenue and Sixteenth street and running west along the center line of Sixteenth street to the center line of California avenue, thence running south along the center line of California avenue to the north line of the right of way of the Chicago, Burlington & Quincy Railroad Company, thence running in a southwesterly direction along said north line of the right of way of the Chicago, Burlington and Quincy Railroad Company to the center line to Clifton Park avenue, thence running south along the center line of Clifton Park avenue to the center line of Twenty-fourth street, thence running west along the center line of Twenty-fourth street to the center line of Central Park avenue, and thence running south along the center line of Central Park avenue to the Illinois

and Michigan canal, in the city of Chicago, in the county of Cook, shall constitute the Ninth district.

Tenth—The counties of Ogle and Winnebago shall constitute the Tenth district.

Eleventh—The Thirty-first ward, except that part thereof lying north of the center line of Fifty-seventh place and east of the east line of the right of way of the Chicago, Rock Island and Pacific Railway Company, and the Thirty-second ward, in the city of Chicago, in the county of Cook, shall constitute the Eleventh district.

Twelfth—The counties of Stephenson, JoDaviess and Carroll shall constitute the Twelfth district.

Thirteenth—That part of the Seventh ward lying south of the center line of Sixty-third street, said center line being extended easterly to Lake Michigan and east of the center line of Cottage Grove avenue, the Eighth and Thirty-third wards, in the city of Chicago, and that part of the town of Calumet lying outside of the city of Chicago, all in the county of Cook, shall constitute the Thirteenth district.

Fourteenth—The counties of Kane and Kendall shall constitute the Fourteenth district.

Fifteenth—The Ninth ward, except that part thereof lying north and west of a line beginning at the intersection of Morgan and Fourteenth streets and running east along the center line of Fourteenth street to the center line of Johnson street, thence running north along the center line of Johnson street to the center line of Maxwell street, and thence running east along the center line of Maxwell street to the south branch of the Chicago river, the Tenth Ward, except that part thereof lying north and west of a line beginning at the intersection of Laflin and Sixteenth streets and running east along the center line of Sixteenth street to the center line of Throop street, thence north along the center line of Throop street to the center line of Fourteenth street, and thence running east along the center line of Fourteenth street to the center line of Morgan street, and that part of the Eleventh ward lying south of the center line of Sixteenth street, in the city of Chicago, in the county of Cook, shall constitute the Fifteenth district.

Sixteenth—The counties of Marshall, Putnam, Livingston and Woodford shall constitute the Sixteenth district.

Seventeenth—That part of the Ninth ward lying north and west of a line beginning at the intersection of Morgan and Fourteenth streets and running east along the center line of Fourteenth street to the center line of Johnson street, thence running north along

the center line of Johnson street to the center line of Maxwell street, and thence running east along the center line of Maxwell street to the south branch of the Chicago river, that part of the Tenth ward lying north and west of a line beginning at the intersection of Laflin and Sixteenth streets and running east on the center line of Sixteenth street to the center line of Throop street, thence running north along the center line of Throop street to the center line of Fourteenth street, and thence running east along the center line of Fourteenth street to the center line of Morgan street, and the Nineteenth ward, in the city of Chicago, in the county of Cook, shall constitute the Seventeenth district.

Eighteenth—The county of Peoria shall constitute the Eighteenth district.

Nineteenth—That part of the Twelfth ward lying north and west of a line beginning at the intersection of Twelfth street and California avenue and running south along the center line of California avenue to the north line of the right of way of the Chicago, Burlington & Quincy Railroad company, and thence running in a southwesterly direction along said north line of the said right of way to the center line of Clifton Park avenue, the Thirteenth and the Thirty-fourth wards, in the city of Chicago, that part of the town of Cicero lying south of the center line of Twelfth street, and the town of Riverside, all in the county of Cook, shall constitute the Nineteenth district.

Twentieth—The counties of Kankakee, Grundy and Iroquois shall constitute the Twentieth district.

Twenty-first—The Fourteenth ward, that part of the Seventeenth ward lying south of a line beginning at the intersection of Ashland avenue and Augusta street and running thence east along the center line of Augusta street to the center line of Holt street, thence running south along the center line of Holt street to the center line of Cornell street, thence running east along the center line of Cornell street to the center line of Milwaukee avenue, thence running southeasterly along the center line of Milwaukee avenue to the center line of Green street, and thence south along the center line of Green street to the center line of Kinzie street, and that part of the Thirty-fifth ward lying south of a line beginning at the intersection of Chicago avenue and Homan avenue and running thence west along the center line of Chicago avenue to the center line of Park avenue, thence south along the center line of Park avenue to the center line of Lake street, and thence running west along the center line of Lake street to the center line of Austin avenue, in the city of Chicago, in the county of Cook, shall constitute the Twenty-first district.

Twenty-second—The counties of Vermillion and Edgar shall constitute the Twenty-second district.

Twenty-third—The Fifteenth ward, that part of the Sixteenth ward, bounded as follows: Beginning at the intersection of North avenue and Ashland avenue and running west on the center line of North avenue, to the center line of Robey street, thence running south along the center line of Robey street to the center line of Division street, thence running east along the center line of Division street to the center line of Ashland avenue, thence running north along the center line of Ashland avenue to the place of beginning, that part of the Thirty-fifth ward lying north of a line beginning at the intersection of Kedzie and Chicago avenues and running west along the center line of Chicago avenue to the center line of Park avenue, thence running south along the center line of Park avenue, to the center line of Lake street, and thence running west along the center line of Lake street to the center line of Austin avenue, in the city of Chicago, and that part of the town of Cicero lying north of the center line of Twelfth street, all in the county of Cook, shall constitute the Twenty-third district.

Twenty-fourth—The counties of Champaign, Piatt and Moultrie shall constitute the Twenty-fourth district.

Twenty-fifth—The Twenty-seventh and Twenty-eight wards in the city of Chicago, in the county of Cook, shall constitute the Twenty-fifth district.

Twenty-sixth—The counties of McLean and Ford shall constitute the Twenty-sixth district.

Twenty-seventh—The Sixteenth ward, except that part bounded as follows: Beginning at the intersection of North avenue and Ashland avenue, and running west on the center line of North avenue to the center line of Robey street, thence running south along the center line of Robey street to the center line of Division street, thence running east along the center line of Division street to the center line of Ashland avenue, thence running north along the center line of Ashland avenue to the place of beginning, that part of the Seventeenth ward bounded as follows: Beginning at the intersection of Ashland avenue and Division street and running south along the center line of Ashland avenue to the center line of Augusta street, thence running east along the center line of Augusta street to the center line of Holt street, thence running south along the center line of Holt street to the center line of Cornell street, thence running east along the center line of Cornell street to the center line of Milwaukee avenue, thence running southeast along the center line of Milwaukee avenue to the center line of Green street, thence run-

ning south along the center line of Green street to the center line of Kinzie street, thence running east along the center line of Kinzie street to the north branch of the Chicago river, thence running northwest along the north branch of the Chicago river to the center line of Division street, thence running west along the center line of Division street to the place of beginning, and the Eighteenth ward, in the city of Chicago, in the county of Cook, shall constitute the Twenty-seventh district.

Twenty-eighth—The counties of Logan, De Witt and Macon shall constitute the Twenty-eighth district.

Twenty-ninth—The Twenty-first ward, except that part thereof lying north of a line beginning at the intersection of Goethe and Sedgwick streets and running east along the center line of Goethe street to the center line of State street, thence running north along the center line of State street to the center line of Schiller street, and thence running along the center line of Schiller street to Lake Michigan, and the Twenty-second ward, except that part thereof lying west of the center line of Halsted street, and except that part of said ward lying north and west of a line beginning at the intersection of North avenue and Sedgwick street and running south along the center line of Sedgwick street to the center line of Sigel street, thence running west along the center line of Sigel street to the center line of Cleveland avenue, thence running south along the center line of Cleveland avenue to the center line of Clybourn avenue, thence running in a northwesterly direction along the center line of Clybourn avenue to the center line of Larrabee street, thence running south along the center line of Larrabee street to the center line of Division street, and thence west along the center line of Division street to the center line of Halsted street, in the city of Chicago, in the county of Cook, shall constitute the Twenty-ninth district.

Thirtieth—The counties of Tazewell, Mason, Menard, Cass, Brown and Schuyler shall constitute the Thirtieth district.

Thirty-first—That part of the Twenty-first ward lying north of a line beginning at the intersection of Goethe and Sedgwick streets and running east along the center line of Goethe street to the center line of State street, thence running north along the center line of State street to the center line of Schiller street, and thence running east along the center line of Schiller street to Lake Michigan, all that part of the Twenty-second ward lying west of the center line of Halsted street and that part of the Twenty-second ward lying east of the center line of Halsted street and north of a line beginning at the intersection of Halsted and Division streets and running east along the center line

of Division street to the center line of Larrabee street, thence running north along the center line of Larrabee street to the center line of Clybourn avenue, thence running in a southeasterly direction along the center line of Clybourn avenue to the center line of Cleveland avenue, thence running north along the center line of Cleveland avenue to the center line of Sigel street, and thence running east along the center line of Sigel street to the center line of Sedgwick street, that part of the Twenty-third ward lying east of the center line of Halsted street, and that part of the Twenty-fifth ward lying south of the center line of Devon avenue, all in the city of Chicago, in the county of Cook, shall constitute the Thirty-first district.

Thirty-second—The counties of McDonough, Hancock and Warren shall constitute the Thirty-second district.

Thirty-third—The counties of Rock Island, Mercer and Henderson shall constitute the Thirty-third district.

Thirty-fourth—The counties of Douglas, Coles and Clark shall constitute the Thirty-fourth district.

Thirty-fifth—The counties of Whiteside, Lee and DeKalb shall constitute the Thirty-fifth district.

Thirty-sixth—The counties of Scott, Calhoun, Pike and Adams shall constitute the Thirty-sixth district.

Thirty-seventh—The counties of Henry, Bureau and Stark shall constitute the Thirty-seventh district.

Thirty-eighth—The counties of Greene, Montgomery, Jersey and Macoupin shall constitute the Thirty-eighth district.

Thirty-ninth—The county of LaSalle shall constitute the Thirty-ninth district.

Fortieth—The counties of Christian, Shelby, Fayette and Cumberland shall constitute the Fortieth district.

Forty-first—The counties of DuPage and Will shall constitute the Forty-first district.

Forty-second—The counties of Clinton, Marion, Clay and Effingham shall constitute the Forty-second district.

Forty-third—The counties of Knox and Fulton shall constitute the Forty-third district.

Forty-fourth—The counties of Washington, Randolph, Perry, Monroe and Jackson shall constitute the Forty-fourth district.

Forty-fifth—The counties of Morgan and Sangamon shall constitute the Forty-fifth district.

Forty-sixth—The counties of Jefferson, Wayne, Richland and Jasper shall constitute the Forty-sixth district.

Forty-seventh—The counties of Madison and Bond shall constitute the Forty-seventh district.

Forty-eighth—The counties of Hardin, Gallatin, White, Edwards, Wabash, Lawrence and Crawford shall constitute the Forty-eighth district.

Forty-ninth—The county of St. Clair shall constitute the Forty-ninth district.

Fiftieth—The counties of Franklin, Williamson, Union, Alexander and Pulaski shall constitute the Fiftieth district.

Fifty-first—The counties of Hamilton, Saline, Pope, Johnson and Massac shall constitute the Fifty-first district.

160. The words “ward,” “street,” “avenue” and “boulevard” in the city of Chicago defined.] § 2. Wherever the words “ward” or “wards,” or “street” or “streets,” or “avenue” or “avenues,” or “boulevard” or “boulevards,” and all other boundary lines of whatever name or description, in the city of Chicago, are used in this Act, they shall be construed as meaning the ward or wards, and street or streets, and avenue or avenues, and boulevard or boulevards, or other proper description, as existing in the said city at the time of the passage of this Act.

161. Repeal.] § 3. An Act entitled, “An Act to apportion the State of Illinois into Senatorial districts, and to repeal certain Acts therein named,” approved June 15, 1893, in force July 1, 1893, and an Act entitled, “An Act to amend Sections one (1) and two (2) of an Act to apportion the State of Illinois into Senatorial districts, and to repeal certain Acts therein named,” approved January 11, 1898, in force July 1, 1898, and all Acts and parts of Acts in conflict herewith are hereby repealed.

TO REGULATE THE MANNER OF HOLDING ELECTIONS.

AN ACT to provide for the printing and distribution of ballots at public expense, and for the nomination of candidates for public offices, to regulate the manner of holding elections and to enforce the secrecy of the ballot. [Approved June 22, 1891. In force July 1, 1891. Laws 1891, p. 108.]

- 162. Ballots printed at public expense.
- 163. Expense to be borne by cities, etc.
- 164. Nomination of candidates.
- 165. Caucus nominations—certificate.
- 166. Nomination certificates—signatures.
- 167. Petitions for nomination.
- 168. Nomination papers—requisites.
- 169. Certificates to be filed.
- 170. Withdrawal of nominations.
- 171. Death or declination of candidate—vacancy.
- 172. Certificates of nomination—objections.
- 173. Nomination to fill vacancy.
- 174. Pasters—stamping on ballots.
- 175. Notice to county clerk.
- 176. Ballot—what to contain—how printed—form.

177. Printing of ballots—by what officers.
178. Vote on constitutional amendment—form of ballot.
179. Repeal.
180. Ballot for representatives in general assembly—how counted.
181. Printed instructions for voters.
182. Instruction cards and specimen ballots to be posted—list of nominations.
183. Judges have charge of ballots.
184. Booths at polling places, stationery, etc.—booths private.
185. Manner of voting—checking on register list.
186. Manner of preparing ballot.
187. Assistance to illiterate voter.
188. Absence for voting purposes—employer preventing—penalty.
189. Ballots not counted—spoiled ballots.
190. Canvass of votes—proclamation—ballot “objected to”—“defective”—ballots destroyed.
191. Electioneering at polls prohibited—penalty.
192. Unlawful exhibition of ballot—false statement—penalty.
193. Destroying poster lists, etc.—penalty.
194. Destroying, etc., certificate of nomination—spurious ballot, etc.—penalty.
195. Neglect of officer to perform duties.
196. Published in pamphlet form.
197. Time polls to be kept open.
198. Repeal of prior acts—effect on penalties.
199. Newspaper publication of this law.

162. Ballots printed at public expense.] § 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly:* That in all elections hereafter to be held in this State for public officers, except for trustees of schools, school directors, members of boards of education, officers of road districts in counties not under township organization, the voting shall be by ballots printed and distributed at public expense as hereinafter provided, and no other ballot shall be used.

163. Expense borne by cities, etc.] § 2. The printing and delivery of the ballots and cards of instruction to voters hereinafter described shall, in municipal elections in cities, villages and incorporated towns be paid for by the several cities, villages and incorporated towns respectively, and in town elections by the town, and in all other elections the printing of the ballots and cards of instruction for the voters in each county and the delivery of them to the several voting precincts and election districts shall be paid for by the several counties respectively. The term “general election,” as used in this Act, shall apply to any election held for the choice of a national, State, judicial, district, or county officer, whether for the full term or for the filling of a vacancy. The term “city election” shall apply to any municipal election held in a city, village or incorporated town.

164. Nomination of candidates.] § 3. Any convention of

delegates, and any caucus or meeting of qualified voters, as hereinafter defined, and individual voters to the number and in the manner hereinafter specified may nominate candidates for political office, whose names shall be placed upon the ballots to be furnished as hereinafter provided: *Provided*, that in any county, city, village or incorporated town, respectively, in which an Act entitled, "An Act providing for primary elections of delegates to nominating conventions of political parties or organizations, and to promote the purity thereof by regulating the conduct thereof, and to support the privileges of free suffrage thereat by prohibiting certain Acts and practices in relation thereto, and providing for the punishment thereof," shall be in force; no candidate nominated by any convention of any political party or organization of any such county city, village or incorporated town or any part thereof, or for the Congress of the United States, shall have his name printed on any official ballot printed and distributed at the public expense in such county, city, village or incorporated town, or any part thereof, unless such candidate shall be nominated by a convention composed of delegates elected for that purpose at the primary election of such political party last preceding the holding of such convention, according to the Act entitled, "An Act providing for primary elections of delegates to nominating conventions of political parties or organizations and to promote the purity thereof by regulating the conduct thereof, and to support the privileges of free suffrage thereat by prohibiting certain Acts and practices in relation thereto, and providing for the punishment thereof."¹ [As amended by Act approved and in force February 10, 1898.]

165. Caucus Nominations—Certificate.] § 4. Any convention of delegates, caucus or meeting representing a political party which at the general election next preceding polled at least two (2) per cent of the entire vote cast in the State, or in the electoral district or division thereof, or the municipality for which the nomination is made, may for the State, or for the electoral district or division thereof or municipality for which the convention, caucus or meeting is held, as the case may be, by causing a certificate of nomination to be duly filed, make one such nomination for each office therein to be filled at the election. Every such certificate of nomination shall state such facts as are required in section six (6) of this Act, and shall be signed by the presiding officer and by the secretary of the convention, caucus or meeting, who shall add to their signatures their places of residence. Such certificates shall be sworn to by them to be true to the best of their

¹ See *L. & N. R. R. Co. v. E. St. Louis*, 134 Ill. 661, and *Callon v. City of Jacksonville*, 147 Ill. 118.

knowledge and belief, and a certificate of the oath shall be annexed to the certificate of nomination.

166. Nomination certificates—Signatures.] § 5. Nominations of candidates for any office to be filled by the voters of the State at large may also be made by nomination papers, signed in the aggregate for each candidate by not less than one thousand (1,000) qualified voters of the State. Nominations of candidates for office within any district or political division less than the State, and in all cities having a population in excess of 5,000, may be made by nomination papers signed in the aggregate for each candidate by qualified voters of such district or political division, not less than one for each fifty persons who voted at the next preceding general election, in such district or division, but in no case by less than twenty-five (25). In elections to be held in a town, village, precinct or ward, and in all cities with a population not exceeding 5,000, the signature of voters thereof equaling five per cent of the vote cast therein at the last preceding election shall be sufficient for the nomination of a candidate who is to be voted for only in such town, village, precinct or ward or city. Each voter signing the nomination paper shall add to his signature his place of residence, and each voter may subscribe to one nomination for each office to be filled, and no more: *Provided*, that the name of any candidate whose name may appear in any other place upon the ballot, shall not be so added by petition for the same office.

167. Petitions for nomination.] § 5½. All petitions for nomination of candidates for public office in this State shall, in addition to other requirements provided by law, be as follows:

Form of Certificate of Nomination.

To be filed with the township clerk at least fifteen days before election.
To _____, clerk of the _____ of _____ in the county of _____, State of Illinois:

This is to certify, that an assembly of qualified electors of the _____ aforesaid, representing the _____ party [which party polled not less than 2 per cent of the whole number of votes delivered in the last preceding general election] was held at _____, in said _____, on the _____ day of _____, A. D. 19—, for the purpose of nominating candidates for the offices to be filled by the Municipal election to be holden on _____ the _____ day of April, A. D. 19—, and that the persons named below were duly nominated candidates for the several offices designated at the left of their names, respectively, and that each of said candidates represents the tenets of the party aforesaid.

Offices to be filled.	Names of candidates.	Place of residence.
Given under our hands this _____ day of _____, A. D. 19—.		
_____ Secretary.		_____ Chairman.
Residence _____		Residence _____

Such petitions shall consist of sheets of uniform size and each sheet shall contain, above the space for signatures, an appropriate heading, giving the information as to name of candidate or candidates in whose behalf such petition is signed; the office; the party or political principle; place of residence, and such other information or wording as required to make same valid, and the heading of each sheet shall be the same. Such petition shall be signed by the qualified voters in their own proper persons only, and opposite the signature of each signer his residence address shall be written (and if a resident of a city having a population of over 10,000 by the then last preceding federal census, the street and number of such residence shall be given.) No signature shall be valid or be counted in considering the validity or sufficiency of such petition unless the requirements of this section are complied with. At the bottom of each sheet of such petition shall be added a statement, signed by an adult resident of the political division for which the candidate is nominated, stating his residence address (and if a resident of a city having a population of over 10,000 by the then last preceding federal census, also stating the street and number of such residence), certifying that the signatures on that sheet of said petition were signed in his presence and are genuine; and that to the best of his knowledge and belief the persons so signing were at the time of signing said petition qualified voters (and in cities, villages and incorporated towns in which voters are or may be required to be registered, that they were also at the time of signing said petition duly registered voters) of the political division for which the candidate

Petition for Nomination for Township officers.

To _____, clerk of the township of _____, county of _____ and State of Illinois:

The undersigned, qualified voters of the said township in said county of _____, and State of Illinois, being in number not less than five per cent of the whole number of votes cast therein at the last preceding general election, in their own proper persons, do hereby nominate the persons, named below, as candidates for the offices designated at the right of their names, to be voted for at the annual township election to be held in said township on Tuesday, the _____ day of April, A. D. 19—, and we request that the names of said candidates be printed on the official voting papers for the said election, to-wit:

Names of candidates _____

Party or political principle, which they represent _____.

Offices to which they are nominated _____.

Place of residence of candidates _____.

And we do hereby certify that we have not subscribed to any other nomination or nominations for any of said offices and have not voted at a primary election held to nominate a candidate or candidates for any office or offices to be voted upon at the said election to be held on the date named above, and that we are, at the time of the signing of this petition for nomi-

is nominated, and that their respective residences are correctly stated therein. Such statement shall be sworn to before some officer of the county in which the person making such statement resides, authorized to administer oaths therein. Such sheets, before being filed, shall be neatly fastened together in book form by placing the sheets in a pile and fastening them together at one edge in a secure and suitable manner, and the sheets shall then be numbered consecutively. The sheets shall not be fastened by pasting them together end for end, so as to form a continuous strip or roll. Said petition, when filed, shall not be withdrawn, or added to, and no signature shall be revoked except by revocation filed in writing with the clerk with whom the petition is required to be filed, and before the filing of such petition. Whoever, in making the sworn statement above prescribed, shall knowingly, wilfully and corruptly swear falsely, shall be deemed guilty of perjury, and on conviction thereof shall be punished accordingly. Whoever forges any name of a signer upon any petition shall be deemed guilty of a forgery, and on conviction thereof, shall be punished accordingly. The word "petition" or "petition for nomination," as used herein, shall mean what is sometimes known as nomination papers, in distinction to what is known as a certificate of nomination. The word "political division for which the candidate is nominated," or its equivalent shall mean the largest political division in which all qualified voters may vote upon such

nation, qualified and duly registered voters of the said township of ———, for which said candidates are nominated, and that our respective residences are correctly stated herein.

Signatures of petitioners.

Residence addresses of petitioners.

STATEMENT.

I, ———, do hereby certify that I am an adult resident of and reside at ———, in the township of ———, county of ———, and State of Illinois; that the signatures on this sheet of said petition were signed in my presence and are the genuine signatures of the persons whose names are contained thereon. That to the best of my knowledge and belief the persons so signing said petition were, at the time of signing the same, duly qualified voters and that they were also, at the time of signing said petition, duly registered voters of the political division for which the said candidates above named are nominated, and that their respective residences are correctly stated therein.

State of Illinois, }
County of ———, } ss.

On this — day of ———, A. D. 19—, personally appeared before me ———, a notary public in and for the county and State aforesaid, ———, who being by me first duly sworn upon oath does depose and say that the foregoing statement by him made and subscribed is true in substance and in fact.

Sheet number —.

Notary Public.

The petition for nomination must be filed with town clerk at least fifteen days prior to day of election.

candidate, as the State in the case of State officers; the town in the case of town officers *et cetera*. *Provided, further*, that any person who has already voted at a primary election held to nominate a candidate or candidates for any office or offices, to be voted upon at any certain election, shall not be qualified to sign a petition of nomination for candidate or candidates, for the same office or offices, to be voted upon at the same certain election. [added by amendment by Act in force July 1, 1905. Laws 1905, p. 208.]

168. Nomination papers—Requisites.] § 6. All certificates of nomination or nomination papers shall, besides containing the names of candidates, specify as to each:

1. The office to which he is nominated.
2. The party or political principle which he represents, expressed in not more than five (5) words.
3. His place of residence with the street and number thereof, if any. In the case of electors for president and vice president of the United States, the names of the candidates for president and vice president may be added to the party or political appellation.

169. Certificates to be filed.] § 7. Certificates of nomination and nomination papers for the nomination of candidates for offices to be filled by the electors of the entire State, or any division or district greater than a county, shall be filed with the Secretary of State at least thirty days previous to the day of election for which the candidates are nominated. All other certificates for the nomination of candidates shall be filed with the county clerk of the respective counties at least thirty days previous to the day of such election: *Provided*, that certificates of nomination and nomination papers for the nomination of candidates for the offices in cities, villages and incorporated towns, and for town offices in counties under township organization, shall be filed with the clerks of the towns, cities, villages and incorporated towns, at least fifteen days previous to the day of such election: *Provided*, that in cities having a population of 500,000 or more that certificates of nomination and nomination papers for the nomination of candidates for the offices in such cities shall be filed with the city clerk of such cities at least twenty-five days previous to the day of such election. [As amended by Act approved May 16, 1905. In force July 1, 1905. Laws 1905, p. 208.]

170. Withdrawal of nomination.] § 8. Any person whose name has been presented as a candidate or who has been nominated by more than one convention, caucus or meeting of qualified voters, may cause his name to be withdrawn from any such nomination by his request in writing, signed by him and duly

acknowledged before an officer qualified to take acknowledgment of deeds, and filed with the Secretary of State not less than twenty-five days (25), or with the proper clerk not less than thirteen (13) days previous to the day of election, and no name so withdrawn shall be printed upon the ballots under the party appellation or title from which the candidate has withdrawn his name. In case the certificate of nomination or petition as provided for in this Act shall contain or exhibit the name of any candidate for any office upon more than one of said certificates or petitions (for the same office), then and in that case the Secretary of State or county clerk, as the case may be, shall immediately notify said candidate of said fact and that his name appears unlawfully upon more than one of said certificates or petitions, and that within three days (3) from the receipt of said notification, said candidate must elect as to which of said political party appellations or groups he desires his name to appear and remain under upon said ballot, and if said candidate refuses, fails or neglects to comply with the provisions, herein, then, and in that case the Secretary of State or county clerk, as the case may be, shall not permit the name of said candidate to appear or be printed or placed upon said ballot under any or either of said political party appellations or groups. All certificates of nomination and nomination papers, when filed, shall be open, under the proper regulation, to public inspection, and the Secretary of State and the several clerks having charge of nomination papers shall preserve the same in their respective offices not less than six months. [As amended by Act approved May 15, 1903. In force July 1, 1903. Laws 1903, p. 174.]

171. Death or declination of candidate—Vacancy.] § 9. In

Form of Withdrawal of Candidate.

To _____

You are hereby notified that I, the undersigned, do hereby withdraw my name from nomination as a candidate for the office of _____, in _____, and you are hereby requested to place such withdrawal on file in your office.

Dated this _____ day of _____, A. D. 19—.

The State of Illinois, }
_____ County, } ss.

On this _____ day of _____, A. D. 19—, personally appeared before me the above named _____, and acknowledged the foregoing withdrawal to be his voluntary act. _____ Notary Public.

The withdrawal must be delivered to the Secretary of State at least 25 days, or to the proper local clerk at least 13 days, before the day of election. State of Illinois, }

County of _____, } ss.

Personally appeared before me, a _____ in and for the county and State aforesaid, the persons whose names are subscribed to the foregoing certificate of nomination, and who, being duly sworn, do depose and say that the state-

case a candidate who has been duly nominated under the provisions of section six (6) of this Act die before election day, or decline the nomination, as in this Act provided, or should any certificate of nomination be held insufficient or inoperative by the officer with whom they may be filed, the vacancy or vacancies thus occasioned may be filled by the political party or other persons making the original nominations, or, if the time is insufficient therefor, then the vacancy may be filled, if the nomination was by convention or caucus, in such manner as the convention or caucus had previously provided, or, in case of no such previous provision, then by a regularly elected general or executive committee representing the political party or persons holding such convention, meeting or caucus. The certificates of nomination made to supply such vacancy shall state, in addition to the other facts required by section six (6) of this Act, the name of the original nominee, the date of his death or declination of nomination, or the fact that the former nomination has been held insufficient or inoperative, and the measures taken in accordance with the above requirements for filling a vacancy, and it shall be signed and sworn to by the presiding officer and secretary of the convention or caucus, or by the chairman and secretary of the duly authorized committee, as the case may be.

172. Certificates of nomination—Objections.] § 10. The certificates of nomination and nomination papers being so filed, and being in apparent conformity with the provisions of this Act,

ments contained in said certificate are true to the best of their knowledge and belief.

Subscribed and sworn to before me this — day of —, A. D. 19—.

Form of Certificate of Nomination to Fill Vacancy.

[To be filed immediately with same officer as original nomination paper.]

We, the undersigned, do hereby certify that at [state the mode, time and place of the original nomination], A. B. of — was nominated for the office of —; that on the — day of —, A. D. 19—, the said A. B. [state how vacancy caused] thereby causing a vacancy in the candidature for said office; and that, in accordance with law, nomination has been made to fill said vacancy as follows:

Office to be filled. —.

Name of candidate —.

Residence —.

We further certify that said nomination has been made by the same authority that made the original nomination, and in due conformity with law.

(Signed) — Chairman.

Personally appeared before me this — day of —, A. D. 19—, the persons whose names are subscribed to the above certificate, who being duly sworn, on their oaths say, that the same is true to the best of their knowledge and belief.

———— Notary Public.

shall be deemed to be valid, unless objection thereto is duly made in writing. Such objections or other questions arising in relation thereto in the case of nomination of State officers shall be considered by the Secretary of State and the Auditor and Attorney General, and the decision of the majority of these officers shall be final. Such objections or questions arising in the case of nominations for officers to be elected by the voters of a division less than the State and greater than a county, shall be considered by the county judges of the counties embraced in such division, and the decision of a majority of these officers shall be final. Such objections or questions arising in the case of nominations of candidates for county offices, shall be considered by the county judge, county clerk, and State's attorney for such county, and the decision of a majority of said officers shall be final. Objections or questions arising in the case of nominations of city, town or village officers shall be considered by the mayor or president of the board of trustees, and the city, town or village clerk, with whom one alderman or trustee thereof, as the case may be, chosen by lot shall act, and the decision of a majority of such officers shall be final. Such objections arising in the case of nominations of town officers shall be considered by the board of auditors of such town, and the decision of a majority of such auditors shall be final. In any case where such objection is made, notice shall forthwith be given to the candidates affected thereby addressed to their places of residence as given in the nomination papers and stating the time and place, when and where such objections will be considered: *Provided*, that in cities, towns or villages having a board of election commissioners such questions shall be considered by such board and its decision shall be final.

173. Nominations to fill vacancy.] § 11. When such cer-

Form of Objection to Nomination.

To

Board of Review for

We the undersigned electors in _____ and State of Illinois, hereby object to and protest against the nomination of _____ as a candidate for the office of _____, to be filled by election on the ____ day of _____, A. D. 19—, which said nomination has been filed in the office of _____; and for the bases of this our objection show as follows:

Wherefore we say that said nomination has not been made according to law, and respectfully request that the same be declared void and that the name of said _____ be excluded from the official voting-paper to be used in said proximate election.

Respectfully submitted this ____ day of _____, A. D. 19—.

Objectors.

tificate is filed with the Secretary of State he shall, in certifying nominations to the various county clerks, insert the name of the person who has been thus nominated to fill a vacancy in place of the original nominee, and in the event that he has already sent forward his certificate, he shall forthwith certify to the clerks of the proper counties the name and description of the person so nominated to fill a vacancy, the office he is nominated for, with the other details mentioned in certificates of nominations filed with the Secretary of State, and in cases where such clerk is not charged by this Act with the printing of the ballots, he shall immediately certify the name so supplied to the authorities charged with the printing of the ballots. The name so supplied for the vacancy shall, if the ballots are not already printed, be placed on the ballots in place of the name of the original nominee; or if the ballots have been printed, new ballots, whenever practicable, shall be furnished.

174. **Pasters—Stamping on ballots.]** § 12. Whenever it may not be practicable to have the new ballots printed, it shall be the duty of the election officer having charge of the ballots to place the name supplied for the vacancy upon each ballot issued before delivering it to the voter; the name so supplied may be placed upon the ballots either by affixing a paster or by writing or stamping the name on the ballot; and to enable this to be done, the officer with whom the certificates of nomination are to be filed shall immediately furnish the name of such substituted nominee to all judges of election within the territory in which such nominee may be a candidate.

175. **Notice to county clerk.]** § 13. Not less than fifteen days before an election to fill any public office the Secretary of State shall certify to the county clerk of each county within which any of the electors may by law vote for candidates for such office, the name and description of each person nominated

Form of Notice of Objections to Nomination Papers.

State of Illinois,
County of _____,
_____ of _____

} ss.
To_____

Whereas, There has been filed in the office of the clerk of said _____ objections in writing to the certificate of your nomination, heretofore filed, to the offices of _____ of said _____. Now, therefore, *take notice*, that such objections, and all questions arising in relation thereto, will be considered, as the law directs, on the _____ day of _____, A. D. 19—, in _____ when and where you may appear.

Dated this _____ day of _____, A. D. 19—.

} Board of
Decision.

for such office, as specified in the certificates of nomination filed with the Secretary of State. In making his certificate to the several county clerks, where the name of more than one candidate has been nominated by the same political party for any given office, it shall be the duty of the Secretary of State to certify the names of such candidates in the manner following, to-wit: The name of the candidate of such party for such office receiving the highest number of votes in the primary election as a candidate for such office, as shown by the official returns on file in his office shall be certified first under the name of such office, and the names of the remaining candidates of such party for such office shall follow in the order of the number of votes received by them respectively at the primary election, determined by official returns on file as aforesaid. The names of candidates of any group of petitioners shall be certified to the several county clerks in the order in which such names appear on the petitions on file in his office. [As amended by Act approved June 25, 1911. In force July 1, 1911. Laws 1911, p. 310.]

176. Ballot—What to contain—How printed—Form.] § 14. The names of all candidates to be voted for in each election district or precinct shall be printed on one ballot; all nominations of any political party or group of petitioners being placed under the party appellation or title of such party or group as designated by them in their certificates of nomination or petitions, or if none be designated, then under some suitable title, and the ballot shall contain no other names, except that in case of electors for president and vice-president of the United States, the names of the candidates for president and vice-president may be added to the party or political designation. If a constitutional amendment or other public measure is submitted to a vote, such question shall be printed upon the ballot after the list of candidates, and words calculated to aid the voter in his choice of candidates or to answer any question submitted to vote may be added, such as, "Vote for one," "Vote for three," "Yes," "No," or the like. On the back or outside of the ballot, so as to appear when folded, shall be printed the words, "Official ballot," followed by the designation of the polling place for which the ballot is prepared, the date of the election and a *facsimile* of the signature of the clerk or other officer who has caused the ballots to be printed. The ballots shall be of plain white paper, through which the printing or writing can not be read. The party appellation or title shall be printed in capital letters, not less than one-fourth of an inch in height and a circle one-half inch in diameter shall be printed at the beginning of the line in which such appellation or title is printed. The names of candidates shall be printed in capital letters not less than one-eighth nor more than one-fourth of an inch in height, and at the beginning of each line in

which a name of a candidate is printed a square shall be printed, the sides of which shall not be less than one-fourth of an inch in length. The list of candidates of the several parties and groups of petitioners shall be placed in separate columns on the ballot in such order as the authorities charged with the printing of the ballots shall decide: *Provided*, that the names of the candidates of the several political parties, and groups of petitioners, certified by the Secretary of State to the several county clerks, shall be printed by the county clerk of the proper county on the official ballot in the order certified by the Secretary of State. Any county clerk refusing, neglecting or failing to print on the official ballot the names of candidates of the several political parties in the order certified by the Secretary of State shall be guilty of a misdemeanor and on conviction shall be fined in any sum not exceeding five hundred dollars and imprisoned in the county jail not less than ten days, and not more than thirty days.

As nearly as practicable the ballot shall be in the following form:

<input type="radio"/> REPUBLICAN.	<input type="radio"/> DEMOCRATIC.	<input type="radio"/> PROHIBITION.
For Governor	For Governor	For Governor
<input type="checkbox"/> JOSEPH W. FIFER.	<input type="checkbox"/> JOHN M. PALMER.	<input type="checkbox"/> DAVID H. HARTS.
For Lieutenant Governor	For Lieutenant Governor	For Lieutenant Governor
<input type="checkbox"/> LYMAN B. RAY.	<input type="checkbox"/> ARTHUR J. BELL.	<input type="checkbox"/> JOS. L. WHITLOCK.
For Secretary of State	For Secretary of State	For Secretary of State
<input type="checkbox"/> I. N. PEARSON.	<input type="checkbox"/> NEWELL D. RICKS.	<input type="checkbox"/> JAMES R. HANNA.

[And continuing in like manner as to all candidates to be voted for at such election.] [As amended by Act approved June 5, 1911. In force July 1, 1911. Laws 1911, p. 310.

177. **Printing of ballots—By what officers.]** § 15. For all elections to which this Act applies, the county clerks, in their respective counties, shall have charge of the printing of the ballots for all general elections, and shall furnish them to the judges of election; the city, town or village clerk shall have charge thereof and furnish them in all city elections, and the town clerk in counties under township organization shall have charge thereof and furnish the same in all town elections to which this Act applies: *Provided*, that in cities, towns or villages having a board of election commissioners, such board shall have charge of the printing of the ballots and furnish them to the judges of election within the territory under their jurisdiction. Ballots shall be printed and in possession of the officer charged with their distribution at least two days before the election and subject to the inspection of candidates and their agents; if any mistakes be discovered they shall be corrected without delay. The officer so charged with the printing of the ballots shall cause to be delivered to the

judges of election at the polling place of each precinct or district, not less than twelve hours before the time fixed by law for the opening of the polls therein, one hundred ballots of the kind to be voted in such precinct or district for every fifty votes cast therein at the last preceding election for State officers; such ballots shall be put up in separate sealed packages, with marks on the outside clearly designating the polling place for which they are intended and the number of ballots enclosed, and receipt therefor shall be given by the judges of election to whom they are delivered, which receipt shall be preserved by the officer charged with the printing of the ballots. The officer or authorities charged with the printing and distributing of the ballots shall provide and retain at his or their office an ample supply of ballots, in addition to those distributed to the several voting precincts or districts, and if at any time on or before the day of election the ballots furnished to any precinct shall be lost, destroyed or exhausted before the polls are closed, on written application signed by a majority of the judges of such precinct or district, or signed and sworn to by one of such judges, he shall immediately cause to be delivered to such judges, at the polling place, such additional supply of ballots as may be required and sufficient to comply with the provisions of this Act.

178. **Vote on constitutional amendment—Form of ballot.]**
§ 16. Whenever a constitutional amendment or other public measure is proposed to be voted upon by the people, the substance of such amendment or other public measure shall be clearly indicated [on a separate ballot] and two spaces shall be left upon the right-hand margin thereof, one for the votes favoring the amendment or public measure, to be designated by the word “Yes,” and one for votes opposing the amendment or measure, to be designated by the word “No,” as in the form herein given:

Proposed amendment to the constitution (or other measure)	Yes	X
Here print the substance of the amendment (or other measure) ..	No	

The elector shall designate his vote by a cross mark, thus: (X.) The said separate ballot shall be printed on paper of sufficient size so that when folded once it shall be large enough to contain the following words, which shall be printed on the back: “Ballot for Constitutional Amendment,” or the name of any and all public measures then to be voted on. This ballot shall be handed to the elector at the same time as the ballot containing

the names of the candidates, and returned therewith by the elector to the proper officer in the manner described by this Act. All provisions of this Act relating to ballots shall apply to this separate ballot. [As amended by Act approved, April 24, 1899. In force July 1, 1899. Laws 1899, p. 151.]

179. Ballot for representatives in General Assembly, how counted.] § 17. No number of votes shall be printed on any ballot after the name of any candidate for representative in the General Assembly. In canvassing the vote for representatives in the General Assembly, the ballots shall be counted in the manner following:

First. Where the names of three candidates for representatives in the General Assembly are printed under one party appellation or title and a cross, thus X, is placed at the appropriate place preceding such party appellation or title and the ballot is not otherwise marked, for representatives in the General Assembly, it shall be counted one and one-half votes for each of said candidates.

Second. Where the names of two candidates for representatives in the General Assembly are printed under one party appellation or title and a cross, thus X, is placed at the appropriate place preceding such party appellation or title and the ballot is not otherwise marked, for representatives in the General Assembly, it shall be counted one and one-half votes for each of said candidates.

Third. Where the name of but one candidate for representatives in the General Assembly is printed under one party appellation or title and a cross, thus X, is placed at the appropriate place preceding such party appellation or title and the ballot is not otherwise marked, for representatives in the General Assembly, it shall be counted three votes for said candidate.

Form of Requisition for Additional Ballots.

State of Illinois, }
County of ———, } ss. Election Precinct No. ———.
——— of ——— }

To ———, clerk of said ———:

Whereas, ——— the voting papers delivered to the Judges of Election in the ——— precinct of ——— of said ——— have been ——— and more voting papers are needed for the election in said precinct, now this is to require that you cause to be delivered immediately to the said Judges of Election ——— additional voting papers for said precinct, as the law provides.

Dated this ——— day of ———, A. D. 19—.

Judges of Election.

I, ———, do solemnly swear that I am the Judge of the election in the above mentioned precinct whose name is signed to the foregoing requisition for additional voting papers, and that the statements therein contained are true, as I verily believe.

Subscribed and sworn to before me this ——— day of ———, A. D. 19—.

Fourth. Whether a cross, thus X, is placed at the appropriate place preceding any party appellation or title, or not, whenever a cross is placed in the square preceding the name of any one candidate for representative in the General Assembly and the ballot is not otherwise marked, the ballot shall be counted three votes for said candidate; where a cross is placed in the square preceding the names of any two candidates for representatives in the General Assembly and the ballot is not otherwise marked, the ballot shall be counted one and one-half votes for each of said two candidates; where a cross is placed in the squares preceding the names of any three candidates for representatives in the General Assembly and the ballot is not otherwise marked, the ballot shall be counted one vote for each of said three candidates.

Fifth. Where the voter has indicated his intention by lawful marking of his ballot to divide his votes among the candidates in any manner other than as specified in the foregoing sections, it shall be counted for such candidates according to the intention of the voter as disclosed by the marking of the ballot.

Sixth. If the ballot has been so marked as to indicate an intention to cast more than three votes for representatives in the General Assembly, such ballot shall not be counted for any of such candidates. [As amended by Act approved May 13, 1905. In force July 1, 1905. Laws 1905, p. 206.

180. Repeal.] § 2. All Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed. [Added by Act approved May 13, 1905. In force July 1, 1905. Laws 1905, p. 206.

181. Printed instructions for voters.] § 18. The officer or officers whose duty it is to have the ballots printed shall prepare full instructions for the guidance of voters at each election as to obtaining ballots, as to the manner of marking them and the method of gaining assistance and as to obtaining new ballots in place of those accidentally spoiled; and they shall respectively cause the same, together with copies of sections twenty-one (21), twenty-two (22), twenty-three (23), twenty-four (24), twenty-five (25), twenty-eight (28) and twenty-nine (29) of this Act, to be printed in large, clear type, on separate cards, to be called cards of instruction; and such officer or officers shall furnish to the judges of election a sufficient number of such cards of instruction to enable the judges of election to comply with the provisions of this Act.

182. Instruction cards and specimen ballots to be posted—List of nominations to be published.] § 19. The judges of elec-

tion shall cause not less than one of such cards to be posted in each voting booth provided for the preparation of ballots, and not less than four of such cards to be posted in and about the polling places upon the day of election. Judges of election shall, not less than five days prior to an election, cause to be conspicuously posted, in five or more public places in their voting precinct or election district, a card of instruction and a specimen ballot printed on colored paper, containing the names, residence and party or political affiliation of all candidates nominated as herein provided, and to be voted for in such precinct, substantially in the form of the general ballot to be used herein. The officer or officers whose duty it is to cause the printing and distribution of ballots shall have printed a sufficient number of specimen ballots and deliver the same to the judges of election so as to enable said judges to comply with the provisions of this Act. In every county of not more than one hundred and fifty thousand (150,000) inhabitants, the officers or authorities charged with the printing and distribution of the ballots shall cause to be published, prior to the day of election, in at least two newspapers, if there be so many published in such county, representing the political parties which cast at the preceding election, the largest and next largest number of votes, a list of all the nominations made as herein provided and to be voted for at such election, as near as may be, in the form in which they shall appear upon the general ballot. [As amended by Act approved April 22, 1899. In force July 1, 1899. Laws, 1899, p. 151.]

183. Judges have charge of ballots.] § 20. The judges of election of their respective election precincts or election districts shall have charge of the ballots and furnish them to the voter as hereinafter set forth.

184. Booths at polling places—Stationery, etc.—Booths private.] § 21. All officers upon whom is imposed by law the duty of designating or providing polling places shall provide in each polling place so designated or provided a sufficient number of booths, which shall be provided with such supplies and conveniences, including shelves, pens, penholders, ink, blotters and pencils, as will enable the voter to prepare his ballot for voting, and in which voters may prepare their ballots, screened from all observation as to the manner in which they do so; and a guard rail shall be so constructed and placed that only such persons as are inside said rail can approach within six feet of the ballot box and of such voting booths. The arrangements shall be such that the voting booths can only be reached by passing within said guard rail. They shall be within plain view of the election officers, and both they and the ballot boxes shall be within plain

view of those outside of the guard rail. Each of said booths shall have three sides inclosed, one side, in front, to be closed with a curtain. Each side of each booth shall be six feet four inches and the curtain shall extend within two feet of the floor, which shall be closed while the voter is preparing his ballot. Each booth shall be at least thirty-two inches square and shall contain a shelf at least one foot wide, at a convenient height for writing. No person other than the election officers and the challengers allowed by law, and those admitted for the purpose of voting as hereinafter provided, shall be permitted within the guard rail, except by authority of the election officers to keep order and enforce the law. The number of voting booths shall not be less than one to every seventy-five voters or fraction thereof who voted at the last preceding election in the district. The expense of providing booths and guard rails and other things required in this Act shall be paid in the same manner as other election expenses. [Amended by Act approved June 19, 1893. In force July 1, 1893. Laws 1893, p. 97.]

185. Manner of voting—Checking on register list.] § 22. Any person desiring to vote shall give his name and, if required to do so, his residence to the judges of election, one of whom shall thereupon announce the same in a loud and distinct tone of voice, clear and audible; and if such name is found on the register of voters by the officer having charge thereof, he shall likewise repeat said name and the voter shall be allowed to enter the space inclosed by the guard rail, as above provided. One of the judges shall give the voter one, and only one, ballot, on the back of which such judge shall indorse his initials in such manner that they may be seen when the ballot is properly folded, and the voter's name shall be immediately checked on the register list. At all elections, when a registry may be required, if the name of any person so desiring to vote at such election is not found on the register of voters, he shall not receive a ballot until he shall have complied with the law prescribing the manner and conditions of voting by unregistered voters. If any person desiring to vote at any election shall be challenged, he shall not receive a ballot until he shall have established his right to vote in the manner provided by law; and if he shall be challenged after he has received his ballot, he shall not be permitted to vote until he has fully complied with such requirements of the law upon being challenged. Besides the election officer, not more than two voters in excess of the whole number of voting booths provided shall be allowed in said enclosed space at one time. [As amended by Act approved April 22, 1899. In force July 1, 1899. Laws 1899, p. 151.]

186. **Manner of preparing ballot.]** § 23. On receipt of his ballot the voter shall forthwith, and without leaving the inclosed space, retire alone to one of the voting booths so provided and shall prepare his ballot by making in the appropriate margin or place a cross (X) opposite the name of the candidate of his choice for each office to be filled, or by writing in the name of the candidate of his choice in a blank space on said ticket, making a cross (X) opposite thereto; and in case of a question submitted to the vote of the people, by making in the appropriate margin or place a cross (X) against the answer he desires to give: *Provided, however,* if he shall desire to vote for all of the candidates of one political party or group of petitioners, he may place such mark at the appropriate place preceding the appellation or title under which the names of the candidates of such party or group of petitioners are printed, and the ballot so marked shall be counted as cast for all of the candidates named under that title: *Provided, further,* that the voter may place such mark at the appropriate place preceding the appellation or title of one party or group of petitioners and may also mark at the appropriate place preceding the name or names of one or more candidates printed under the appellation or title of some other party or group of petitioners, and a ballot so marked shall be counted as cast for all the candidates, named under the appellation or title which has been so marked, except as to the officers as to which he has placed such mark preceding the name or names of some other candidate or candidates printed under the title of some other party or group of petitioners, and as to such it shall be counted as cast for the candidate or candidates preceding whose name or names such mark may have been placed. Before leaving the voting booth the voter shall fold his ballot in such manner as to conceal the marks thereon. He shall then vote forthwith in the manner now provided by law, except that the number corresponding to the number of the voter on the poll books shall not be indorsed on the back of his ballot. He shall mark and deposit his ballot without undue delay, and shall quit said inclosed space as soon as he has voted. No voter shall be allowed to occupy a voting booth already occupied by another, nor remain within said inclosed space more than ten minutes, nor to occupy a voting booth more than five minutes in case all of said voting booths are in use and other voters waiting to occupy the same. No voter not an election officer shall, after having voted, be allowed to re-enter said inclosed space during said election. No person shall take or remove any ballot from the polling place before the close of the poll. No voter shall vote or offer to vote any ballot except such as he has received from the judges of election in charge of the ballots. Any voter who shall, by acci-

dent or mistake, spoil his ballot, may, on returning said spoiled ballot, receive another in place thereof.

187. Assistance to illiterate voter.] § 24. Any voter who may declare upon oath that he cannot read the English language or that by reason of any physical disability he is unable to mark his ballot, shall, upon request, be assisted in marking his ballot by two of the election officers of different political parties, to be selected from the judges and clerks of the precinct in which they are to act, to be designated by the judges of election of each precinct at the opening of the polls. Such officers shall mark the ballot as directed by the voter, and shall thereafter give no information regarding the same. The clerks of election shall enter upon the poll lists after the name of any elector who received such assistance in marking his ballot, a memorandum of the fact. Intoxication shall not be regarded as a physical disability, and no intoxicated person shall be entitled to assistance in marking his ballot.

188. Absence for voting purposes—Employer preventing—Penalty.] § 25. Any person entitled to vote at a general or special election or at any election at which propositions are submitted to a popular vote in this State shall, on the day of such election, be entitled to absent himself from any services or employment in which he is then engaged or employed, for a period of two hours between the time of opening and closing of the polls; and such voter shall not because of so absenting himself be liable to any penalty, nor shall any deduction be made on account of such absence from his usual salary or wages: *Provided, however,* That application for such leave of absence shall be made prior to the day of election. The employer may specify the hours during which said employe may absent himself as aforesaid. Any person or corporation who shall refuse to an employe the privilege hereby conferred, or shall subject an employe to a penalty or deduction of wages because of the exercise of such privilege, or who shall directly or indirectly violate the provisions of this section, shall be deemed guilty of a misdemeanor and be fined in any sum not less than five dollars (\$5) nor more than one hundred dollars (\$100). [As amended by Act approved June 1, 1908. In force July 1, 1908. Laws 1908, p. 80.]

Form of Voter's Oath of Inability.

State of Illinois, }
County of _____, } ss. Election Precinct No. _____.
_____ of _____ }

_____, being duly sworn on his oath declares that he is a lawful voter in said precinct, and that by reason of _____ he is not able to mark his voting paper, and therefore asks the assistance of the two election officers designated for that purpose, as the law in such case provides.
Subscribed and sworn to before me this _____ day of _____, A. D. 19—.

189.—Ballots not counted—Spoiled Ballots.] § 26. If the voter marks more names than there are persons to be elected to an office, or if for any reason it is impossible to determine the voter's choice for any office to be filled, his ballot shall not be counted for such office. No ballot without the official endorsement shall be allowed to be deposited in the ballot box, and none but ballots provided in accordance with the provisions of this Act shall be counted. Ballots not counted shall be marked "defective" on the back thereof and ballots to which objection has been made by either of the judges or challengers shall be marked "objected to" on the back thereof, and a memorandum signed by the judges stating how it was counted shall be written upon the back of each ballot so marked, and all ballots marked defective or objected to shall be enclosed in an envelope securely sealed and so marked and endorsed as to clearly disclose its contents. All ballots not voted, and all that have been spoiled by the voters while attempting to vote, shall be returned by the judges of election to the officer or authorities charged with the printing and distribution of the ballots and a receipt taken therefor, and shall be preserved six months; such officer shall keep a record of the number of ballots delivered for each polling place, the name of the person to whom and the time when delivered, and he shall also enter upon such record the number and character of ballot returned, with the time when and the person by whom they are returned.

190. Canvass of votes—Proclamation—Ballots "objected to"—"Defective"—Ballots destroyed.] § 27. When the canvass of the ballots shall have been completed, as now provided by law, the clerks shall announce to the judges the total number of votes received by each candidate; each judge of the election shall proclaim in a loud voice the total number of votes received by each of the persons voted for and the office for which he is designated, and the number of votes for and the number of votes against any proposition which shall have been submitted to a vote of the people; such proclamation shall be *prima facie* evidence of the result of such canvass of the ballots. Immediately after making such proclamation, and before separating, the judges shall fold in two folds, and string closely upon a single piece of flexible wire, all ballots which have been counted by them, except those marked "objected to," unite the ends of such wire in a firm knot, seal the knot in such manner that it cannot be untied without breaking the seal, enclose the ballots so strung in a secure canvass covering and securely tie and seal such canvas covering with official wax impression seals to be provided by the judges, in such manner that it cannot be opened without breaking the seals,

and return said ballots, together with the package containing the ballots marked "defective" or "objected to," in such sealed canvas covering to the proper clerk or to the board of election commissioners, as the case may be, and such officer shall carefully preserve said ballots for six months, at the expiration of that time shall destroy them by burning without previously opening the packages. Such ballots shall be destroyed in the presence of the official custodian thereof and two electors of approved integrity and good repute and members respectively of the two leading political parties. The said electors shall be designated by the county judge of the county in which such ballots are kept: *Provided*, that if any contest of the election of any officer voted for at such election shall be pending at the expiration of said time the said ballots shall not be destroyed until such contest is finally determined. In all cases of contested elections the parties contesting the same shall have the right to have said ballots opened and to have all errors of the judges in counting or refusing to count any ballot, corrected by the court or body trying such contest, but such ballots shall be opened only in open court or in open session of such body and in the presence of the officer having the custody thereof. [As amended by Act approved June 9, 1897. In force July 1, 1897. Laws 1897, p. 212.]

191. Electioneering at polls prohibited—Penalty.] § 28. No person whatever shall do any electioneering or soliciting of votes on election day within any polling place or within one hundred (100) feet of any polling place; no person shall interrupt, hinder or oppose any voter while approaching the polling place for the purpose of voting. Whoever shall violate the provisions of this section shall be punished by a fine of not less than twenty-five dollars (\$25) nor more than one hundred dollars (\$100) for each and every offense; and it shall be the duty of the judges of election to enforce the provision of this section.

192. Unlawful exhibition of ballot—False statement—Penalty.] § 29. Any voter who shall, except as herein otherwise provided, allow his ballot to be seen by any person with an apparent intention of letting it be known how he is about to vote, or who shall make a false statement as to his inability to mark his ballot, or any person who shall interfere, or attempt to interfere, with any voter when inside said inclosed space, or when marking his ballot, or who shall endeavor to induce any voter before voting to show how he marks or has marked his ballot, shall be punished by a fine of not less than five dollars (\$5) nor more than one hundred dollars (\$100), and it shall be the duty of the election judges to enforce the provisions of this section.

193. Destroying poster lists, etc.—Penalty.] § 30. Any

person who shall, prior to an election, wilfully destroy or deface any list of candidates posted in accordance with the provisions of this Act, or who, during an election shall wilfully deface, tear down, remove, or destroy any card of instructions or specimen ballot printed and posted for the instruction of voters, or who shall, during an election, wilfully remove or destroy any of the supplies or conveniences furnished to enable voters to prepare their ballots, or shall wilfully hinder the voting of others, shall be punished by a fine not less than ten dollars (\$10), nor more than one hundred dollars (\$100).

194. Destroying, etc., certificate of nomination—Spurious ballots, etc.—Penalty.] § 31. Any person who shall falsely make or wilfully destroy any certificate of nomination or nomination papers, or any part thereof, or any letter of withdrawal, or file any certificate of nomination or nomination paper, knowing the same or any part thereof to be falsely made, or suppress any certificate of nomination or nomination paper or any part thereof, which has been duly filed, or forge or falsely make the official indorsement on any ballot or shall take from the polling place any official ballot or substitute therefor any spurious or counterfeit ballot, or make, use, circulate, or cause to be made or circulated, as an official ballot, any paper printed in imitation or resemblance thereof, or wilfully destroy or deface any ballot, or wilfully delay the delivery of any ballots, shall be punished by a fine not less than one hundred dollars (\$100) and not exceeding one thousand dollars (\$1,000), or by imprisonment in the penitentiary not less than one year and not exceeding five years, or by both such fine and imprisonment.

195. Neglect of officer to perform duties.] § 32. Any public officer upon whom a duty is imposed by this Act who shall wilfully neglect to perform such duty, or who shall wilfully perform it in such a way as to hinder the object of this Act, shall be punished by a fine of not less than \$5 nor more than \$1,000, or by imprisonment in the penitentiary for not less than one year and not exceeding five years, or by both such fine and imprisonment.

196. Published in pamphlet form.] § 33. It shall be the duty of the Secretary of State, with the aid and advice of the Attorney General, to cause one thousand copies of this Act to be printed immediately, in pamphlet form, with all necessary forms and instructions to assist election officers to carry it into effect, and to distribute the same through the county clerks of the several counties of the State.

197. Time polls to be kept open.] § 34. At all elections to which this Act applies, except at elections held in cities, villages

and incorporated towns which have heretofore adopted or may hereafter adopt the provisions of an Act entitled, "An Act regulating the holding of elections and declaring the results thereof in cities, villages and incorporated towns," approved June 19, 1885, the polls shall be opened at seven o'clock in the morning and shall be closed at five o'clock in the evening. *Provided, however,* that cities, villages and towns in counties of the third class may provide by city or village ordinance, or by resolution adopted at the annual town meeting, that polls shall be opened at six o'clock in the morning and be closed at four o'clock in the afternoon, and after the passage of such ordinance or resolution and the filing of a certified copy thereof with the county clerk of the county in which such city, village or town is located, the polls shall open at six o'clock in the morning and close at four o'clock in the afternoon of the same day at all elections held in such city, village or town adopting such ordinance or resolution and filing the same as herein provided. [As amended by Act approved and in force March 15, 1905. Laws 1905, p. 210.]

198.—Repeal of prior Acts—Effect on penalties.] § 35. All Acts and parts of Acts inconsistent with the provisions of this Act are hereby repealed: *Provided,* that this Act shall not be construed to repeal an Act entitled, "An Act regulating the holding of elections and declaring the results thereof in cities, villages and incorporated towns," approved June 19, 1885, or any of the amendments thereto; but all elections in cities, villages and incorporated towns which may have heretofore adopted or may hereafter adopt the said Act shall be held in accordance with the provisions of the aforesaid Act, except as to the manner of making nominations for office, the manner of providing printing and distributing ballots, the form of ballots, the arrangement and the furnishing of polling places and voting booths, and the manner of voting and the numbering and preserving of ballots, all of which shall be in conformity with the provisions of this Act. No penalty provided for a violation of any of the provisions of this Act shall be construed as a substitute for, or repeal of, any penalty provided in the aforesaid Act of June 19, 1885, for a violation of any of the provisions of said Act.

199. Newspaper publication of this law.] § 36. It shall be the duty of the board of supervisors of each county under township organization, and of the board of county commissioners in counties not under township organization, at their first meeting after the passage of this Act, to select two newspapers, one from each of the two political parties casting the greatest number of votes for State Treasurer at the election in 1890, in which this law shall be published: *Provided,* that the pay for such publica-

tion shall be fixed by said board of supervisors or county commissioners, but in no case shall it exceed the sum of thirty dollars to each newspaper publishing the same. When the board of supervisors or county commissioners have selected the newspapers in which the law shall be published, it shall be the duty of the county clerk to certify such action to the Secretary of the State, who shall at once furnish to each of said papers a copy of the law, and upon the receipt of the Secretary of State of a copy of said paper, with an affidavit of the publisher or business manager that the law was published in each and every copy of said paper on a certain date (which shall not be later than thirty days after its receipt from the Secretary of State), the Secretary of State shall certify the amount fixed for the payment for the publication of this law in said paper to the Auditor of Public Accounts, who shall draw his warrant on the Treasurer for the sum named: *Provided*, that the non-publication of this law, as herein provided, shall not invalidate the law.

QUESTIONS OF PUBLIC POLICY.

AN ACT providing for an expression of opinion by electors on questions of public policy at any general or special election. [Approved May 11, 1901. In force July 1, 1901. Laws 1901, p. 198.]

200. Petition to submit question of public policy at election, etc.

201. Question to be printed on separate ballot—form.

200. Petition to submit question of public policy at election—Duty of election officers.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That on a written petition signed by twenty-five per cent of the registered voters of any incorporated town, village, city, township, county or school district; or ten per cent of the registered voters of the State, it shall be the duty of the proper election officers in each case to submit any question of public policy so petitioned for, to the electors of the incorporated town, village, city, township, county, school district or State, as the case may be, at any general or special election named in the petition: *Provided*, such petition is filed with the proper election officers, in each case not less than sixty (60) days before the date of the election at which the question or questions petitioned for are to be submitted. Not more than three propositions shall be submitted at the same election, and each proposition shall be submitted in the order of its filing.

201. Question to be printed on separate ballot—Form.] § 2. Every question submitted to electors shall be printed in plain, prominent type upon a separate ballot, in form required by law, the same as a Constitutional amendment or other public measure proposed to be voted upon by the people.

DISPENSING WITH INDIVIDUAL TALLY MARKS IN COUNTING
"STRAIGHT TICKETS."

AN ACT to dispense with individual tally marks in canvassing the so-called "straight tickets" at all elections hereafter held in this State; and concerning the duties of the clerks in the canvass of votes at such elections. [Approved May 13, 1905. In force July 1, 1905. Laws 1905, p. 205.]

202. Dispensing with individual tally marks in counting "straight tickets."
203. Repeal.

202. Dispensing with individual tally marks in counting "straight tickets."] § 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly:* That hereafter at all general and special elections and primary elections held in this State, where the law shall provide that the clerks shall tally the votes received by candidates at such election, it shall not be necessary for the clerks of such election to mark upon the tally sheets kept by them, separate marks or tallies for each vote received by the candidates upon the ballots containing the same names, commonly known and hereafter in this Act designated as "straight tickets." But when the judges shall have counted and announced to the clerks, as near as may be as now or hereafter provided by law, the number of votes received by each set of candidates upon such "straight tickets," the clerks shall set such number of votes down, in figures, opposite the names of the respective candidates, in a column provided for that purpose upon the tally sheets; which column shall immediately adjoin upon the left the space reserved for the tallies, and which shall be of convenient width and shall be headed, "Number of votes received upon straight tickets." The judges shall then proceed to count and announce the votes received by each candidate upon all ballots other than "straight tickets," including all ballots known as "split tickets," and all ballots known as "scratched tickets," and the clerks shall proceed to tally the same upon the tally sheets, and to compare and announce the result thereof, which counting, announcing and tallying shall be conducted as now or hereafter provided by law. The clerks shall set down, in figures, the number of votes received by each candidate on ballots other than "straight tickets," as so ascertained and announced, in a column provided for that purpose upon the tally sheets, immediately adjoining on the right the space reserved for the tallies, which column shall be of convenient width, and shall be headed "Number of votes received upon ballots other than straight tickets." The clerks shall then proceed to add together the number of votes received by each candidate, as shown in the column containing the straight votes; and the number as shown in the column containing the votes other than straight votes, which result will show the total number of votes received

by each candidate; and after comparing their results and finding that the same agree and are correct, they shall set down the same, in figures, in a column provided upon the tally sheets for that purpose, on the extreme right-hand side thereof, which shall be of convenient width and shall be headed, "Total number of votes." Whereupon one of the clerks shall announce in a loud voice to the judges the total number of votes received by and counted for each candidate.

203. **Repeal.]** § 2. All laws and parts of laws in conflict herewith are hereby repealed. Nothing in this Act contained shall be construed to authorize or permit the canvassing, countnig or tallying ballots with any less degree of strictness than now required by law; the intention of this Act being to dispense with the individual tally marks only so far as the so-called "straight tickets" are concerned; and all other operations of tallying, counting and canvassing and announcing the votes shall proceed as near as may be in accordance with the laws now or hereafter provided therefor.

WOMEN MAY VOTE FOR SCHOOL OFFICERS.

AN ACT to entitle women to vote at any election held for the purpose of choosing any officer under the general or special school laws of this State. [Approved June 19, 1891. In force July 1, 1891. Laws 1891, p. 135.]

204. Women may vote for school officers.

205. Ballot—what to contain—how deposited.

204. **Women may vote for school officers.] § 1.** *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* Any woman of the age of twenty-one years and upward, belonging to either of the classes mentioned in Art. VII of the Constitution of the State of Illinois, who shall have resided in this State one year, in the county ninety days, and in the election district thirty days preceding any election held for the purpose of choosing any officer of schools under the general or special school laws of this State, shall be entitled to vote at such election in the school district of which she shall at the time have been for thirty days a resident: *Provided*, any woman so desirous of voting at any such election shall have been registered in the same manner as is provided for the registration of male voters.

205. **Ballot—What to contain—How deposited.] § 2.** Whenever the election of public school officers shall occur at the same election at which other public officers are elected, the ballot offered by any woman entitled to vote under this Act shall not contain the name of any person to be voted for at such election except such officers of public schools, and such ballots shall all be deposited in a separate ballot-box, but canvassed with other ballots cast for school officers at such election.

WOMEN MAY VOTE FOR PRESIDENTIAL ELECTORS AND CERTAIN OTHER OFFICERS, ETC.

AN ACT granting women the right to vote for presidential electors and certain other officers, and to participate and vote in certain matters and elections. [Approved June 26, 1913. In force July 1, 1913. Laws 1913, p. 333.]

205a. What officers and propositions in State, Cities, Villages and Towns.

205b. What township officers, etc.

205c. Separate ballot boxes and ballots—Canvas—Registration.

205a. What officers and propositions in State, Cities, Villages and Towns.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That all women, citizens of the United States, above the age of 21 years, having resided in the State one year, in the county ninety days, and in the election district thirty days next preceding any election therein, shall be allowed to vote at such election for presidential electors, member of the State board of equalization, clerk of the appellate court, county collector, county surveyor, members of board of assessors, members of board of review, sanitary district trustees, and for all officers of cities, villages and towns (except police magistrates), and upon all questions or propositions submitted to a vote of the electors of such municipalities or other political divisions of this State.

205b. What township officers, etc.] § 2. All such women may also vote for the following township officers: Supervisor, town clerk, assessor, collector and highway commissioner, and may also participate and vote in all annual and special town meetings in the township in which such election district shall be.

205c. Separate ballot boxes and ballots—Canvas—Registration.] § 3. Separate ballot boxes and ballots shall be provided for women, which ballots shall contain the names of the candidates for such offices which are to be voted for and the special questions submitted as aforesaid, and the ballots cast by women shall be canvassed with the other ballots cast for such officers and on such questions. At any such election where registration is required, women shall register in the same manner as male voters.

ANTI-SALOON TERRITORY.

AN ACT to provide for the creation by popular vote of anti-saloon territory within which the sale of intoxicating liquor and the licensing of such sale shall be prohibited and for the abolition by like means of territory so created. [Approved May 16, 1907. In force July 1, 1907. Laws 1907, p. 297.]

- 206. Words and phrases defined.
- 207. Petition—where and when filed—signatures.
- 208. Vote operative 30 days after day of election.
- 209. Form of petition—how signed—sworn statement—filing certificate
forgery—penalty.
- 210. Notice of submission of proposition—publication of.
- 211. Ballot—form of—canvass—watchers.
- 212. Result of vote—evidence.
- 213. Anti-saloon territory defined—conflicting ordinances suspended.
- 214. Submission of proposition of continuance—separate ballot in dis-
tricts.
- 215. What constitutes bar to submission of proposition.
- 216. Unlawful to sell or issue license to sell intoxicating liquor.
- 217. Penalty.
- 218. Unlawful selling defined.
- 219. Place where liquor is sold declared a common nuisance—penalty.
- 220. Offenses and penalties.
- 221. Where offenses may be prosecuted.
- 222. Prosecution—form of—*prima-facie* evidence.
- 223. Sale of liquor by druggists—record of—when sales by manufac-
turer exempt.
- 224. Petition for contesting validity of election—proceeding.

206. Words and phrases defined.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* The words and phrases mentioned in this section as used in this Act and in proceedings pursuant hereto shall, unless the same be inconsistent with the context, be construed as follows:

“Anti-saloon territory” shall mean all territory within the limits of any town, precinct, city or village in this State in which, through the action of the legal voters therein as provided by this Act, the sale of intoxicating liquor, except as herein provided, is prohibited.

“Town” shall include towns in counties under township organization and incorporated towns, provided that no incorporated town, city or village that has been heretofore annexed to another incorporated town, city or village under the provisions of “An Act to provide for the annexation of cities, incorporated towns and villages,” approved and in force April 25, 1889, shall be entitled to hold an election under the provisions of this Act separately from the town, city or village to which the same has been annexed.

“Precinct” shall mean any “voting precinct” or “election precinct” which was a sub-division for voting in counties not

under township organization at the general election held on the 6th day of November, A. D. 1906.

"Political subdivision" shall mean the phrase "town, precinct, city or village."

"District" shall mean territory in which after the same has become anti-saloon territory the limits of the political subdivision have been changed.

In the phrase, "Shall this become anti-saloon territory?" the proper word, whether "town," "precinct," "city," or "village," shall be understood to be inserted in the blank, and the same shall be inserted in the petitions filed by and the ballots prepared for the voters of any town, precinct, city or village.

"Said proposition" shall mean the proposition "Shall this (town, precinct, city or village, as the case may be) become anti-saloon territory?"

"Clerk" shall mean, with reference to towns, cities and villages, the town, city or village clerk as the case may be, with reference to precincts in counties not under township organization it shall mean the county clerk; and it shall mean the board of election commissioners of any city, village or incorporated town in this State in which there now is or hereafter may be a board of election commissioners, and in the provisions of this Act applicable to or within any such city, village or incorporated town; "legal voter" shall mean a duly registered legal voter.

"Election" shall mean, in towns, cities and villages, an election at a time fixed by law for choosing town, city or village officers, as the case may be; in precincts in counties not under township organization it shall mean an election at a time fixed by law for choosing county officers. In cities and villages the officers of which shall be chosen for a term of four years, "election" shall also mean an election at a time fixed by law for choosing county officers. In no case shall it mean a special election to fill a vacancy.

"Intoxicating liquor" shall include all distilled, spirituous, vinous, fermented and malt liquors.

207. Petition—Where and when filed—Signatures.] § 2. Upon the filing in the office of the clerk at least sixty days before an election of a petition as in this Act provided, directed to such clerk, containing the signatures of legal voters of any political subdivision in number not less than one-fourth of the total vote cast in such political subdivision at the last election therein, to submit to the voters of such political subdivision the proposition "shall this become anti-saloon territory?" said proposition shall be submitted at such election, as in this Act provided, to

the legal voters of such political subdivision and if a majority of the legal voters voting upon said proposition shall vote "Yes" such political subdivision shall become anti-saloon territory. Such petition shall be a public document and shall be subject to the inspection of the public.

208. **Vote operative 30 days after day of election.]** § 3. A vote under the provisions of this Act shall become operative on the thirtieth day after the day of the election at which such vote is cast.

209. **Form of petition—How signed—Sworn statement—Filing certificate—Forgery—Penalty.]** § 4. A petition for submission of said proposition shall be in substantially the following form:

To the —— [county, town, city or village] clerk of the [*here insert the corporate or legal name of the county, town, city or village*]:

The undersigned, residents and legal voters of the —— [*insert the legal name or correct designation of the political subdivision*] respectfully petition that you cause to be submitted, in the manner provided by law, to the voters thereof, at the next election, the proposition "Shall this —— become anti-saloon territory?"

Name of Signer.	House Number.	Street.	Date of Signing.
_____	_____	_____	_____
.....

Such petition shall consist of sheets having such form printed or written at the top thereof, and shall be signed by the legal voters in their own proper persons only, and opposite the signature of each legal voter shall be written his residence address (stating the street and the house number, if there be such) and the date of signing the same. No signature shall be valid or be counted in considering such petition unless these requirements are complied with and unless the date of signing is less than six months preceding the date of filing the same. At the bottom of each sheet of such petition shall be added a statement signed by a resident of the county in which the signers thereof reside, with his residence address as aforesaid, stating that the signatures on that sheet of the said petition are genuine, and that to the best of his knowledge and belief the persons so signing were at the time of signing said petition legal voters (and in cities, villages, and incorporated towns in which voters are or may be required to be registered, that they were at the time of signing said petition duly registered legal voters) of the said town, precinct, city

or village, as the case may be; that their respective residences are correctly stated therein and that each signer signed the same on the date set opposite his name. Such statement shall be sworn to before some officer residing in the county where such legal voters reside, authorized to administer oaths therein. Such petition, so verified, or a copy thereof, duly certified as hereinafter provided, shall be *prima facie* evidence that the signatures, statement of residence and dates upon such petition are genuine and true and that the persons signing the same are legal voters of the political subdivision named. Such sheets shall be fastened together in one document, filed as a whole and when filed shall not be withdrawn or added to. No signature shall be revoked except by a revocation filed with the clerk with whom the petition is required to be filed and before the filing of such petition. Upon request of anyone filing such a petition and verified statement and paying or tendering to the clerk one dollar for each one hundred names, or fraction thereof, signed thereto, together with a copy thereof, the clerk shall immediately compare the original and copy and attach to such copy and deliver to such person his official certificate that such copy is a true copy of the original, stating the day when such original was filed in his office. Whoever in making the sworn statement above prescribed shall knowingly, wilfully and corruptly swear falsely shall be deemed guilty of perjury and on conviction thereof shall be punished accordingly. Whoever forges the signature of any person upon any petition or statement provided for in this Act shall be deemed guilty of forgery and on conviction thereof shall be punished accordingly.

210. Notice of submission of proposition—Publication of.]

§ 5. The clerk with whom any petition shall be filed as provided in this Act shall cause notice to be given in the manner provided by law for giving notice of an election, of the submission of said proposition at the next election to the voters of the political subdivision named in such petition. Publication of the submission of said proposition to the voters of such political subdivision shall likewise be made in the manner provided by law for the publication of the list of nominations to be voted for at an election: *Provided*, that the failure of such clerk to cause such notice to be given, or the failure to make publication of the submission of said proposition as above provided, shall not affect the validity or binding force of the vote upon said proposition.

211. Ballot—Form of—Canvass—Watchers.] § 6.

The clerk with whom any petition shall be filed as provided by this Act shall cause said proposition to be plainly printed upon all

the ballots to be used at the next election of officers in the political subdivision named in such petition, and below the list of candidates named thereon, as follows :

Shall this ——— [town, precinct, city <i>or</i> village	Yes.	
<i>as the case may be</i>] become anti-saloon territory?	No	

At the canvass of the ballots in each polling place where said proposition is submitted, it shall be the duty of the judges of election to admit to the room at such polling place, as special watchers of such canvass, one legal voter selected by the persons managing the interests of those in favor of and one selected by the persons managing the interests of those opposed to said proposition, provided such legal voters shall be of good character and sober and shall in no wise interfere with such canvass, and said judges and the police officers and other officers of the law shall protect such watchers and see that they are not excluded and at the time of such canvass of the ballots cast upon said proposition, such watchers shall be entitled to a position where they can plainly see and read each ballot and it shall be the duty of such judges to protect them in such position. Whenever any other method of taking and recording votes at elections than by means of printed ballots is provided by law the procedure for taking and recording votes upon said proposition may conform to the method so provided.

212. **Result of vote—Evidence.]** § 7. The clerk shall record in a well bound book, to be kept in his office by himself and his successors, the result of the vote upon said proposition and such result may be proved in all courts and in all proceedings by such record or by the official certificate of the clerk, and in cases where such a record or certificate shows that a majority of the legal voters voting upon said proposition voted “Yes” the same shall be *prima facie* evidence that the political subdivision to which such vote was applicable has become anti-saloon territory.

213. **Anti-saloon territory defined—Conflicting ordinances suspended.]** § 8. All the territory within any political subdivision which has become anti-saloon territory shall continue to be anti-saloon territory throughout its entire extent, notwithstanding any change which may be made in the limits of any such political subdivision, until the legal voters thereof have voted, according to the provisions of this Act, to discontinue such anti-saloon territory and the following section shall be construed in harmony herewith. In all anti-saloon territory,

during the time that it continues to be anti-saloon territory, the operation of all ordinances providing for the restriction, regulation or prohibition of the sale of intoxicating liquor or for the issuing of dram shop licenses within any portion or the whole of such territory, so far as inconsistent with its status as anti-saloon territory, shall be suspended.

214. Submission of proposition of continuance—Separate ballot in districts.] § 9. Upon the filing in the office of the clerk, at least sixty days before an election in any political subdivision, of a petition directed to such clerk, containing the signatures of legal voters of an anti-saloon territory or district, in number not less than one-fourth of the total vote cast therein at the last election, to submit to the voters thereof the proposition "Shall this (political subdivision or district) continue to be anti-saloon territory?" (provided such petition corresponds in all other respects with the petition in this Act before described), such proposition shall be submitted at such election to the voters of such political subdivision or district, and the provisions of sections one (1), four (4), five (5), six (6), and seven (7) of this Act shall apply in all respects, so far as applicable to the proposition "shall this (political subdivision or district) continue to be anti-saloon territory?" to the submission of such proposition to such voters, to the petition therefor, to the recording of the vote thereon and to the proof and evidence of the petition and vote, except that in a district such proposition shall be submitted by separate ballot. If a majority of the legal voters voting upon such last mentioned proposition in any political subdivision or district vote "No," such political subdivision or district shall cease to be anti-saloon territory, and all ordinances providing for the restriction, regulation or prohibition of the sale of intoxicating liquor or for the issuing of dram shop licenses, the operation of which was in any wise suspended within such political subdivision or district by virtue of the vote therein to become anti-saloon territory, and with all additions and amendments which in the meantime may have been made thereto, shall, if not in the meantime repealed, become and be in force within said political subdivision or district to the same extent, only, however, as the same would then be in force had such political subdivision or district never become anti-saloon territory. The petition mentioned in this section shall be a public document and shall be subject to the inspection of the public.

215. What constitutes bar to submission of proposition.] § 10. A vote under the provisions of this Act in and for any political subdivision upon the proposition, "Shall this

become anti-saloon territory?" or in and for any political subdivision or district upon the proposition "Shall this (political subdivision or district) continue to be anti-saloon territory?" shall be a bar to the submission to the voters thereof of either of such propositions as applied to that identical political subdivision or district only, until after the lapse of eighteen months.

216. Unlawful to sell or issue license to sell intoxicating liquor.] § 11. It shall not be lawful to sell intoxicating liquor in any quantity whatever nor to grant or issue, or cause to be granted or issued, any license to sell intoxicating liquor in any quantity whatever within the limits of any political subdivision or district whatever in this State while the same is anti-saloon territory, and if any such license be granted or issued in violation hereof the same shall be void.

217. Penalty.] § 12. Whoever shall by himself or another, either as principal, clerk or servant, directly or indirectly, sell, barter or exchange any intoxicating liquor in any quantity whatever within the limits of any political subdivision or district in this State, while the same is anti-saloon territory, shall be fined not less than twenty dollars (\$20), nor more than one hundred dollars (\$100), or imprisoned in the county jail for not less than ten (10) days nor more than thirty (30) days, or both, in the discretion of the court. If any person shall be convicted of violating any provision of this section and shall subsequently violate any provision of this section he shall upon conviction thereof, be fined not less than fifty dollars (\$50) nor more than two hundred dollars (\$200) and imprisoned in the county jail for not less than ten (10) days, nor more than thirty (30) days. And in like manner, if he shall subsequently violate any provision of this section, for such third and each subsequent violation he shall upon conviction thereof be fined not less than one hundred dollars (\$100), nor more than two hundred dollars (\$200), and imprisoned in the county jail for not less than thirty (30) days, nor more than ninety (90) days.

218. Unlawful selling defined.] § 13. The giving away or delivery of any intoxicating liquor for the purpose of evading any provision of this Act, or the taking of orders or the making of agreements, at or within any political subdivision or district while the same is anti-saloon territory, for the sale or delivery of any intoxicating liquor, or other shift or device to evade any provision of this Act, shall be held to be an unlawful selling.

219. Place where liquor is sold declared a common nuisance—Penalty.] § 14. All places where intoxicating liquor is sold

in violation of any provision of this Act shall be taken and held and are declared to be common nuisances and may be abated as such; and whoever shall keep any such place, by himself or his agent or servant, shall, for each offense, upon conviction thereof, be fined not less than fifty (\$50) dollars nor more than (\$100) dollars and confined in the county jail not less than twenty (20) days, nor more than fifty (50) days, and it shall be a part of the judgment, upon the conviction of the keeper, that the place where liquor is found to have been sold contrary to this Act be shut up and abated until the keeper shall give bond, with sufficient security to be approved by the court, in the penal sum of one thousand (1,000) dollars, payable to the People of the State of Illinois, conditioned that he will not sell intoxicating liquor contrary to law, and will pay all fines, costs and damages assessed against him for any violation thereof; and in case of a violation of the condition of such bond, suit may be brought and recovery had thereon for the use of the county, city, town or village for any fine or fines that may be assessed against him under this Act.

220. **Offenses and penalties.]** § 15. Any clerk, judge of election, police officer or other officer of the law, who shall refuse or neglect or fail to discharge any duty imposed by this Act, and anyone who signs a petition provided for in this Act, knowing he is not qualified to do so, or who files with the clerk any such petition or any sheet or other part thereof knowing that it contains the signature of a person not qualified to sign the same, or who receives, requests or demands or gives, offers or promises any reward for the signing or the refraining from signing of any such petition, or who by treating or giving intoxicating liquor or anything else, or by threats to injure another in person or property, or by betting or other device, either directly or indirectly influences or attempts to influence anyone to sign or refrain from signing any such petition, shall upon conviction thereof be fined not less than twenty (20) dollars, nor more than two hundred (200) dollars, or imprisoned in the county jail for not less than ten (10) days nor more than ninety (90) days, or both, in the discretion of the court. If any person shall be convicted of violating any provision of this section and shall subsequently violate any provision of this section, for such second and each subsequent violation he shall, upon conviction thereof, be fined not less than twenty (20) dollars nor more than two hundred (200) dollars and imprisoned in the county jail for not less than ten (10) days nor more than ninety (90) days.

221. **Where offenses may be prosecuted.]** § 16. All offenses defined or mentioned in this Act may be prosecuted in any court of record having criminal jurisdiction, or the fines prescribed in this Act may be sued for and recovered before any court or justice of the peace having jurisdiction thereof, in the name of the People of the State of Illinois; and in case of conviction the offender shall stand committed to the county jail until the judgment and costs are fully paid.

222. **Prosecution—Form of—Prima facie evidence.]** § 17. In all prosecutions under this Act, by indictment or otherwise, it shall not be necessary to state the kind of liquor sold; nor to describe the place where sold; nor to show the knowledge of the principal to convict for the acts of an agent or servant; nor to state the name of any person to whom liquor is sold; nor to set forth the facts showing that the required number of legal voters petitioned for the submission to the voters of said proposition, nor that a majority of the legal voters voting upon said proposition voted "Yes," but it shall be sufficient to state in that regard that the act complained of took place in an anti-saloon territory or district. The issuance of an internal revenue special tax stamp or receipt by the United States to any person as a wholesale or retail dealer in liquors or in malt liquors at any place within territory which, at the time of the issuance thereof, is anti-saloon territory, shall be *prima facie* evidence of the sale of intoxicating liquor by such person at such place, or at any place of business of such person within such territory where such stamp or receipt is posted, and at the time charged in any suit or prosecution under this Act: *Provided*, such time is within the life of such stamp or receipt.

223. **Sale of liquor by druggists—Record of—When sales by Manufacturer exempt.]** § 18. Nothing in this Act shall be construed to forbid or prevent the sale within anti-saloon territory by druggists to whom permits or licenses therefor have been duly granted in the manner provided by law, of liquor for medicinal, mechanical, sacramental and chemical purposes only, not to be drunk upon the premises under any circumstances, so long as such druggist in good faith shall keep a true and an exact record in a book, which he shall provide for the purpose, in which shall be entered at the time of every sale of intoxicating liquor made by him or in or about his place of business to all persons whomsoever, the date of such sale, the name of the purchaser, and his residence (stating the street and the house number if there be such), the quantity and kind of such liquor and the purpose for which the same is sold, and so long as such druggist

shall keep such book open to the full and free inspection of the police and all public officers elected and appointed and their deputies and agents during business hours. Nothing in this Act shall be construed to forbid or prevent the sale of intoxicating liquor for the period of thirty days next after the vote shall have been taken in the anti-saloon territory thereby created, according to the terms of a dram shop or other municipal license theretofore regularly issued in good faith according to law. Any portion of a dram shop or other municipal license fee which shall have been paid and which shall represent the unexpired period for which said dram shop or other municipal license was issued after the political subdivision in which such dram shop is located shall have become anti-saloon territory, shall be refunded by the municipality receiving the same. Nothing in this Act shall be construed to forbid or prevent the sale at wholesale by a manufacturer who manufactures from the raw materials of the product of his own manufactory located within anti-saloon territory for delivery outside the limits of such territory.

224. Petition for contesting validity of election—Proceeding.] § 19. Any five legal voters of any political subdivision in which an election shall have been held as provided for in this Act, may, within ten days after the canvass of the returns of such election and upon filing a bond for costs, contest the validity of such election by filing a verified petition in the county court of the county in which such political subdivision is situated, setting forth the grounds for the contest. Upon the filing of such petition a summons shall forthwith issue from such court addressed in cases of an election in a town, city or village, to the town, city or village clerk as the case may be; and in other cases to the county board, notifying such clerk or board of the filing of such petition and directing him or it to appear in such court on behalf of such political subdivision at the time named in the summons, which time shall be not less than five nor more than fifteen days after the filing of such petition. The procedure in such cases shall be the same as that provided by law for the contesting of an election upon a subject which shall have been submitted to a vote of the people, so far as applicable. The county court shall have final jurisdiction to hear and determine the merits of such cases. Any legal voter in the political subdivision in which such election shall have been held may appear in person, or by attorney, in any such contested election case in defense of the validity of such election.

DIVISION X.

COUNTIES.¹

AN ACT to revise the law in relation to counties. [Approved and in force March 31, 1874. Revised Stat., chap. 34.]

BOUNDARIES AND JURISDICTION.

1. Boundaries.
2. Jurisdiction over rivers.
3. Jurisdiction over Lake Michigan.

1. Boundaries.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That the boundaries of the several counties of this State shall remain as now established until the same be changed according to law.

2. Jurisdiction over rivers.] § 2. Each county bounded by either the Mississippi, Ohio or Wabash rivers shall have jurisdiction over such river to the extent it is so bounded, which jurisdiction may be exercised concurrently with the contiguous States bounded by such river. [Revised Stat. 1845, p. 133, § 21. Laws 1849, p. 134, §§ 1, 2.]

3. Jurisdiction over Lake Michigan.] § 3. Each of the counties bordering on Lake Michigan shall have jurisdiction over said lake eastwardly, to the east line of the state.

ALTERATION OF COUNTY LINES.

4. Petition to county board—Election ordered.
5. Notices of election.
6. Form of ballots—Effect of vote.
7. Restriction.
8. Adjustment of debts.
9. When territory released.
10. When elections at discretion of county board.

4. Petition to county board—Election ordered.] § 4. When a majority of the legal voters, residing upon any territory, not less than half of one congressional township, shall petition the county board of their own county, and also of the county to which they desire such territory to be transferred, for leave to have such territory transferred to such county, it shall be the duty of the several county boards so petitioned to order an election for such purpose in their respective counties, to be held within three months from the time of receiving such petition;

(1) The present law relating to counties is a complete revision of the whole law relating to the same, and although it contains no express words of repeal, it must be regarded as a repeal of all other laws on the subject. *Devine v. Board of Commissioners of Cook Co.*, 84 Ill. R., 590.

which election shall be governed by the laws relating to general elections, and returns of said election shall be made to the Secretary of State as for county officers. [See Const., Art. 10, § 3, p. 69.]

5. Notices of election.] § 5. Notices of such election shall contain a description of the territory proposed to be transferred, the names of the counties from and to which such transfer is intended to be made, and shall be posted as required for general elections.

6. Form of ballots—Effect of vote.] § 6. The ballots used in the said elections may be in the following form, to-wit: “For transferring territory,” and “Against transferring territory,” when, if a majority of the voters voting upon said question in the county from which said territory is proposed to be taken, and a majority of the voters of the county to which the same is proposed to be transferred, shall be “For transferring territory,” then the said territory shall be transferred to and become a part of the county to which it is proposed to transfer the same, on and after the first day of March succeeding such elections, and shall be subject to all the laws, rules and regulations thereof: *Provided*, that all assessments and collection of taxes, and judicial or other official proceedings commenced prior to said first day of March, shall be continued, prosecuted and completed, in the same manner as if no such transfer had been made: *And, provided, further*, That all township or precinct officers within said transferred territory shall continue to hold their respective offices within the county to which they may be transferred, until their respective terms of office expire.

7. Restriction.] § 7. No county shall be reduced, under the provisions of this Act, to less contents than 400 square miles; nor shall any county line be made to pass within less than ten miles of the county seat of the county from which the territory is so transferred. [See Const., Art. 10, § 1, p. 69.]

8. Adjustment of debts.] § 8. No territory transferred under the provisions of this Act shall be released from the payment of its proportion of the debts of the county from which such territory is transferred; and such proportionate indebtedness from such transferred territory shall be collected by the county to which such territory is transferred, at an equal or greater rate than is levied and collected in the county from which such territory was transferred—such rate to be ascertained by the certificate of the county clerk of said last named county, and when so collected, to be paid over to the county entitled thereto. [See Const., Art. 10, § 3, p. 69.]

9. When territory released.] § 9. When the county to which such territory is transferred shall also be indebted, the county board of such county shall release such transferred territory from the payment of such indebtedness to an amount equal to that which said territory is required to pay to the county from which it was transferred.

10. When elections at discretion of county board.] § 10. When a majority of the legal voters of any territory, less than half of one congressional township, shall petition the county boards as provided in section four of this Act, the said county boards may, in their discretion, order elections to be held as herein provided; and in any case where elections have been held under this Act, and the result has been adverse to the petitioners, it shall be in the discretion of the said boards to order another election, on a petition to transfer the same territory, within three years from the time of holding such former election.

NEW COUNTIES.

11. Petition to county boards—Election.
12. Certificate of result to Secretary of State—Notice to Governor—Election, etc.
13. Justices, etc., continued in office.
14. Canvass and return of votes.
15. Oath of office—Organized—Circuit court.
16. Transfer of suits—Lien of judgment, etc.
17. Adjustment of property and debts.
18. Commissioner to copy records—Appointment.
19. Duty of such commissioner.
20. Further duties—Evidence.
21. Fixing county seat.

11. Petition to county board—Election.] § 11. Whenever it is desired to form a new county out of one or more of the then existing counties, and a petition praying for the erection of such new county, stating and describing the territory proposed to be taken for such new county, together with the name of such proposed new county, signed by a majority of the legal voters residing in the territory to be stricken from such county or counties, shall be presented to the county board of each county to be affected by such division, and it appearing that such new county can be constitutionally formed, it shall be the duty of such county board or county boards to make an order providing for the submission of the question of the erection of such new county to a vote of the people of the counties to be affected, at the next succeeding general election for the election of members of the General Assembly, of which the notice shall be given, the votes canvassed, and the returns made as in case of election of county

officers or members of the General Assembly; and the form of the ballot to be used in the determination of such question shall be as follows: "For new county," and "Against new county."¹

12. Certificate of result to Secretary of State—Notice to Governor—Election, etc.] § 12. If it shall appear that a majority of all the votes cast at such election, in each of the counties interested, is in favor of the erection of such new county, the county clerk of each of said counties shall certify the same to the Secretary of State, stating in such certificate the name, territorial contents and boundaries of such new county; whereupon the Secretary of State shall notify the Governor of the result of such election, whose duty it shall be to order an election of county officers for such new county, at such time as he shall designate, and he may, when necessary, fix the place [of] holding election, notice of which shall be given in such manner as the Governor shall direct. At such election the qualified voters of said new county shall elect all county officers for said county, except as hereinafter excepted, who shall be commissioned and qualified in the same manner as such officers are in other counties in this State, and who shall continue in office until the next general election for such officers, and until their successors are elected and qualified, and who shall have all the jurisdiction and

(1) Counties are the creatures of legislative will. They are vested with certain corporate powers, in order to enable them to perform the duties required of them as part of the machinery of the State. The legislature may enlarge, modify or diminish them at any time, subject to the restriction of the State Constitution. *Laramie Co. v. Albany Co.*, 92 U. S. R. (2 Otto), 307. But the legislature cannot abolish counties, and form their territory into one or more counties, nor take territory from one county and add it to another, without submitting the act to a vote of the inhabitants affected by such changes; nor can a county seat be removed without the affirmative vote of the electors of the county, nor can county lines be changed except by the vote of a majority of all the legal voters voting on the question. *The People v. Marshall*, 12 Ill. R., 391; *The People v. Warfield*, 20 Ill. R., 160. An organized county may be disorganized by the legislature. *State v. McFadden*, 23 Minn. R., 40.

Counties are public corporations, and are completely under legislative control. They can be changed, modified, enlarged, restrained or repealed, to suit the ever varying exigencies of the State, subject to the Constitution. *Coles v. Madison Co.*, Breese R., 154; *The People v. Wren*, 4 Scam. R., 269.

A county may be created and have existence as such, notwithstanding it has no county officers. And where a new county is created by setting off for that purpose organized townships from existing counties; the supervisors of these townships would be supervisors in the new county, and their powers would continue under the general law regulating the same, unless there be some provision to the contrary in the law creating the new county. *Rice v. Ruddiman*, 10 Mich. R., 125.

In determining the area of a county, bodies of water lying within its boundaries are to be computed and considered as integral parts thereof. *Powers ex rel.*, etc., v. *Larrabee*, 1 Wis. R., 200.

The government surveys are to be deemed correct, and a county containing just twenty-five townships, according to government survey, is to be deemed *prima facie* to contain an area of exactly nine hundred square miles. *Brayton ex rel.*, etc., v. *Merriman*, 6 Wis. R., 14.

Although the legislature, in an Act submitting to the electors the question of a division of their county, may have prescribed a form for the ballot, yet all other ballots not in that precise form are not thereby excluded; but when the intention of the elector can be clearly ascertained from the ballot itself, or by the aid of other competent evidence, such intention, should have effect, and the vote be counted. *Spaulding ex rel.*, etc., v. *Elwood*, 12 Wis. R., 551.

perform all the duties which are or may be conferred upon such officers in other counties of this State.

13. Justices, etc., continued in office.] § 13. All the justices of the peace, constables, and other township or precinct officers, who were previously elected and qualified in the county or counties from which such new county has been formed, whose term of office shall not have expired at the time of said election, and whose residence shall be embraced within the limits of said new county, shall continue in office until their terms of office shall expire, and until their successors shall be elected and qualified.

14. Canvass and return of votes.] § 14. The votes for the county officers of said new county shall be canvassed and returns made, by the county clerk or county clerks of the county or counties from which such new county was formed, as provided by law in other cases.

15. Oath of office—Organized—Circuit court.] § 15. The oath of office may be administered to the several county officers of such new county by any person authorized by law to administer oaths; and as soon as said county officers are duly qualified, the county shall be regarded as legally organized, and for judicial purposes shall be deemed and taken as belonging to the circuit in which said new county, or the greater part thereof, is embraced, and terms of the circuit court shall be held at such place in said new county as the county board thereof shall designate, until the county seat thereof shall be permanently located. The times of holding such court shall be appointed by the judge thereof, until otherwise provided by law.

16. Transfer of suits, etc., lien of judgments, etc.] § 16. The courts of any county or counties from which such new county is erected may, by proper order, transfer any suit or other legal proceeding affecting real estate in such new county, to the proper court of such new county, or may transfer any suit and all papers and records pertaining thereto to such new county, when all the parties thereto are residents of such new county; but all judgments and other liens in the county or counties from which such new county was erected, shall have the same effect as if no new county had been erected.

17. Adjustment of property and debts.] § 17. All the property, both real and personal, and all debts, liabilities and choses in action of every kind, belonging to the county or counties from which such new county was formed, shall be divided by the several county boards of the counties interested, between the county or counties from which such new county is formed and the new

county, in proportion to the assessed value of property for the last preceding year which has been taken from such original county or counties and carried to such new county; and if such boards cannot agree upon such division, they may refer the matter of difference to arbitrators, or the rights to such property may be settled by a bill in chancery, filed by either party for that purpose. In case the said property cannot be divided or removed, the county receiving the same shall pay to the other a proportionate value for the same.

18. Commissioner to copy records—Appointment.] § 18. The county board of such new county shall, at any session of said board, by an order to be entered of record, appoint some competent person a commissioner, for the purpose hereinafter expressed, who shall take an oath of office before some person authorized by law to administer oaths. Said board shall, at the same time, provide a sufficient number of blank books, and deliver them to said commissioner, who shall receipt for the same to the county clerk of said county.

19. Duty of such commissioner.] § 19. As soon as said books shall be delivered to said commissioner, he shall record in each a copy of the order of his appointment and of his oath of office, and shall thereupon proceed to transcribe into such books, from the records of the county or several counties from which the new county is formed, all such deeds, mortgages and title papers of every description, with the certificates of acknowledgment thereto, and the date of the filing of the same for record, of lands lying in said new county which previously were recorded in the counties from which such new county was formed; and there shall be allowed said commissioner such sum as his services aforesaid are reasonably worth, to be paid out of the county treasury of the said new county.

20. Further duties—Evidence.] § 20. Said commissioner shall note, at the end of each paper he shall transcribe, the book and page from which the same was transcribed, and shall make a correct double index of said records; and on the completion of his duties, said commissioner shall return said books to the recorder of deeds of said new county, with his certificate attached thereto, showing that he has complied with the law; whereupon they shall be taken and considered, to all intents and purposes, as books of records of deeds, mortgages and title papers for said new county. And copies of said record, certified by the officer having the custody of the same, shall be evidence in all courts and places, in the same manner that copies of records are evidence in other cases, and with like effect.

21. Fixing county seat.] § 21. For the purpose of fixing the permanent location of the county seat of such new county, the voters of said county shall, at said election for county officers, vote for some place, to be designated upon their ballots, for a county seat; upon which ballot shall be written or printed, or partly written and partly printed, "For County Seat," after which words shall be written or printed the name of the place intended for the county seat. The place receiving a majority of all the legal votes cast upon the question shall be the county seat of said county. But if no place shall receive a majority of all the votes cast upon the question, then it shall be the duty of the county board of said county to call another election within sixty days thereafter, at the several places of holding elections in said county, at which election the voters of said county shall proceed to vote as before, but shall choose from the two places having the greatest number of legal voters at the former election; and the place having the majority of all the legal votes cast at the second election shall be the permanent county seat of said county.

OF THE POWERS AND DUTIES OF COUNTIES AND COUNTY BOARDS.

22. Corporate name of county.
23. By whom corporate powers exercised.
24. Powers of county.
25. Powers of county boards.
26. Duties of county board.
27. Raising tax in addition to constitutional limit.
28. Issuing bonds and raising tax may be included.
29. Former deeds, etc., confirmed.
30. Contracts, etc.—Rights of county—Suits.
31. Venue of suits by or against county.
32. Jurors and witnesses.
33. Duty of county board to prosecute and defend suit.
34. How judgment against county paid.
35. Auditing claims against county—Appeal.
36. Summons.
37. Transcript—filing same.
38. Time of fixing compensation of county officers.
39. Funds kept separate.
40. Issuing county bonds.
41. Neglect of duty.

22. Corporate name of county.] § 22. Each county which has heretofore been, or may hereafter be established in this State, according to the laws thereof, shall be a body politic and corporate, by the name and style of "The county of," and by that name may sue and be sued, plead and may be impleaded, defend and be defended against, in any court of record having jurisdiction of the subject matter, either in law or equity, or other place

where justice shall be administered. [Revised Stat. 1845, p. 130, § 1.

23. By whom corporate powers exercised.] § 23. The powers of the county as a body corporate or politic, shall be exercised by a county board, to-wit: In counties under township organization (except the county of Cook), by the board of supervisors, which shall be composed of the town and such other supervisors as are or may be elected pursuant to law; in the county of Cook, by a board of county commissioners pursuant to section 7, article 10 of the Constitution; in counties not under township organization, by the board of county commissioners. [Laws 1861, p. 236, § 4.

24. Powers of county.] § 24. Each county shall have power:

First—To purchase and hold the real and personal estate necessary for the uses of the county, and to purchase and hold, for the benefit of the county, real estate sold by virtue of judicial proceedings in which the county is plaintiff.

Second—To sell and convey or lease any real or personal estate owned by the county.

Third—To make all contracts and do all other acts in relation to the property and concerns of the county, necessary to the exercise of its corporate powers.

Fourth—To take all necessary measures and institute proceedings to enforce all laws for the prevention of cruelty to animals.

Fifth—To purchase and hold real estate upon which may be erected and maintained by the county a sanitarium for the care and treatment of the residents of the county who may be afflicted with tuberculosis; and to purchase, hold and use all necessary personal property for the proper care and maintenance of such real estate and sanitarium.

Sixth—To purchase and hold or lease real estate upon which may be erected and maintained buildings to be utilized for purposes of agricultural experiments and to purchase, hold and use personal property for the care and maintenance of such real estate in connection with such experimental purposes. [As amended by Act approved June 6, 1911. In force July 1, 1911. Laws 1911, p. 245.

Sixth—To cause to be erected, or otherwise provided, suitable buildings for, and maintain a county hospital and necessary branch hospitals for the care of such sick as may by law be proper charges upon the county, and to provide for the management of the same. [As amended by Act approved June 6, 1911. In force July 1, 1911. Laws 1911, p. 246.

25. Powers of county boards.] § 25. The county boards of the several counties shall have power:

First—To take and have the care and custody of all the real and personal estate owned by the county.

Second—To manage the county funds and county business, except as otherwise specifically provided.

Third—To examine and settle all accounts against the county, and all accounts concerning the receipts and expenditures of the county.

Fourth—To cause to be erected, or otherwise provided, a suitable workhouse, in which persons, convicted of offenses punishable by imprisonment in the county jail, may be confined and employed, and to make rules and regulations for the management thereof. They may contract for the use of the city workhouse when the same can satisfactorily be done.

Fifth—To cause to be erected, or otherwise provided, suitable buildings for, and maintain, a county insane asylum, and provide for the management of the same.

Sixth—To cause to be annually levied and collected taxes for county purposes, including all purposes for which money may be raised by the county by taxation, not exceeding seventy-five cents on the one hundred dollars' valuation, and in addition thereto, an annual tax not exceeding one hundred cents on the one hundred dollars, for the purpose of paying the interest and principal of indebtedness which existed at the time of the adoption of the Constitution.¹

Seventh—To authorize the vacation of any town plat when the same is not within any incorporated town, village or city, on the petition of two-thirds of the owners thereof.

Eighth—To change the name of any town plat on the petition of a majority of the legal voters residing therein, when the inhabitants thereof have not become a body corporate. [See Revised Stat., chap. 107, § 28; Revised Stat. 1845, p. 132, § 17; p. 133, § 25; Laws 1859, p. 129, §§ 1, 2; Laws 1869, p. 160, § 1; p. 104, § 2.

Ninth—To cause to be erected, or otherwise provided and maintained all suitable buildings for a sanitarium for the care and treatment of all persons suffering from tuberculosis who may be admitted to said sanitarium by or under the direction of, said board, and to provide for the maintenance and management of the same. [Added by Act approved April 26, 1909. In force July 1, 1909. Laws 1909, p. 162.

(1) A resolution of a board of supervisors providing for raising money to be paid over to the towns without any definition of purposes, and to be spent under the directions of a town officer, is unauthorized and void. *Attorney General v. Supervisors of Bay Co.*, 34 Mich. R., 47.

26. Duties of county board.] § 26. It shall be the duty of the county board of each county:

First—To erect or otherwise provide when necessary, and the finances of the county will justify it, and keep in repair, a suitable court house, jail and other necessary county buildings, and to provide proper rooms and offices for the accommodation of the several courts of record of the county, and for the county board, county clerk, county treasurer, recorder, sheriff, and the clerks of said courts, and to provide suitable furniture therefor. But in counties not under township organization, no appropriations shall be made for the erection of public buildings, without first submitting the proposition to a vote of the people of the county, and said vote shall be submitted in the same manner and under the same restrictions as provided for in like cases in section 27 of this Act; and the votes therefor shall be "For taxation," specifying the object, and those against shall be "Against taxation," specifying the object.¹

Second—To provide and keep in repair, when the finances of the county permit, suitable fire-proof safes or offices for the county clerk, county treasurer, recorder, sheriff and clerks of said courts.

Third—To provide suitable books, stationery, printing and postage for the use of the county board, county clerk, county treasurer, recorder, sheriff, coroner, State's attorney, superintendent of schools, surveyor, judges and clerks of courts of record.²

Fourth—To cause to be published at the close of each annual, regular or special meeting of the board, a brief statement of the proceedings thereof in one or more newspapers published in the

(1) County boards have, under the statute, the sole power to determine the size, cost and quality of the materials of which jails should be built. *People ex rel. v. Board of Supervisors of La Salle Co.*, 84 Ill. R., 303. *Village of Princeville v. Anten et al.*, 77 Ill., 325.

(2) The law provides that the clerks of the circuit and county courts shall procure the proper books and stationery for their respective offices, and it is the duty of the county board to provide the clerks of the circuit and county courts the necessary rooms and office furniture, vaults or other means for the safe keeping of the archives of the circuit and county clerks, and it is the duty of the county board to make allowances for the safe, and for articles of stationery necessary for their respective courts, out of the county treasury from time to time. Stationery includes necessary blanks for use. It ordinarily includes all articles usually sold by stationers. Revised Stat., 263, § 19, § 20. *Knox Co. v. Arms*, 22 Ill. R., 175. The county may appoint an agent to purchase stationery for these offices, but if he fails to keep them properly supplied the clerks may make the purchases themselves and bind the county. *McClaughey v. Hancock Co.*, 46 Ill. R., 356.

Sheriffs are not compelled to keep their offices at the county seat as the clerks are, and there being no statute warranting it, they cannot be allowed pay from the county for lights and fuel for their offices. *Armsby v. Supervisors of Warren Co.*, 20 Ill. R., 126. On the subject of sheriff's fees for mileage in serving grand juries, see *Bryner v. Board of Supervisors*, 24 Ill. R., 195.

It is held in Wisconsin, *Jefferson Co. v. Besley*, 5 Wis. R., 134, that the necessary lights and fuel for keeping of the several county offices in a suitable condition for the transaction of business, are a proper county charge; but this applies only to those officers who are entitled by law to keep their offices open for the accommodation of the public. *Board of Supervisors of De Kalb Co. v. Beveridge*, 16 Ill. R., 312. Under this construction sheriffs would no doubt be allowed for necessary fuel and lights for the county jail. Opinion Att'y Gen'l Colville, Minn., July 7, 1867.

The expense of keeping property of a county in repair, is a proper subject of charge against the county, as, also the expense of cleaning and painting courtrooms. And it is held in New York that an allowance of the account is final and conclusive as regards amount. *People v. Stout*, 23 Barb. R., 349.

county, in which shall be set forth the name of every individual who shall have had any account audited and allowed by said board and the amount of said claim as allowed, and the amount claimed, and also their proceedings upon the equalization of the assessment roll: *Provided*, that no publication in a newspaper shall be required unless the same can be done without unreasonable expense.

Fifth—To make out at its meeting in September, annually, a full and accurate statement of the receipts and expenditures of the preceding year, which statement shall contain a full and correct description of each item, from whom and on what account received, to whom paid, and on what account expended, together with an accurate statement of the finances of the county at the end of the fiscal year, including all debts and liabilities of every description and the assets and other means to discharge the same; and within thirty days thereafter to cause the same to be posted up at the court house door, and at two other places in the county and published for one week in some newspaper therein, if there is one, and the same can be done without unreasonable expense. [As amended by Act approved June 5, 1909. In force July 1, 1909. Laws 1909, p. 160.]

27. Raising tax in addition to Constitutional limit.] § 27. Whenever the county board shall deem it necessary to assess taxes the aggregate of which shall exceed the rate of seventy-five cents per one hundred dollars valuation of the property of the county, except when such excess is to be used for the payment of indebtedness existing at the adoption of the Constitution, the county board may, by an order entered of record, set forth substantially the amount of such excess required, the purpose for which the same will be required, and the number of years such excess will be required to be levied, and if for the payment of interest or principal, or both, upon bonds, shall in a general way designate the bonds and specify the number of years such excess will be required to be levied, and provide for the submission of the question of assessing the additional rate required to a vote of the people of the county at the next election for county officers or at any judicial election held in such county after the adoption of the resolution: *Provided*, if such additional rate required is for the purpose of building a court house or any other public building for the county, a special election may be held for such purpose, and it shall be the duty of the county clerk in his election notice to give notice of such submission. The votes therefor shall be "For additional tax," and those against shall be "Against additional tax." The votes shall be canvassed and re-

On the subject of taxation by county authorities the Constitution declares Art. IX, § 8, county authorities shall never assess taxes, the aggregate of which shall exceed 75 cents per \$100 valuation, except for the payment of indebtedness existing at the adoption of this Constitution, unless authorized by a vote of the people of the county.

turned the same as those for county officers, and if a majority of the votes cast upon the question are "for additional tax," then the county board shall have power to cause such additional tax to be levied and collected in accordance with the terms of such resolution, and the money so collected shall be kept as a separate fund and disbursed only for the purpose for which the same was raised: *Provided*, any surplus that may remain after the payment of all demands against said fund, may be used for other purposes. [As amended by Act approved and in force May 14, 1909. Laws 1909, p. 148.]

28. Issuing bonds and raising tax may be included.] § 28. If it shall be deemed necessary to submit to a vote of the people at the same election the question of issuing bonds and the raising of such additional tax, the same may be included in one proceeding, and in that case the votes in favor of issuing such bonds and levying such additional tax shall be "For bonds and additional tax," and those against shall be "Against bonds and additional tax."

29. Former deeds, etc., confirmed.] § 29. All deeds, grants and conveyances heretofore made, and duly acknowledged and recorded as other deeds, conveying any lands, tenements or hereditaments to any county or to the inhabitants of any county, or to the county commissioners, county commissioners' court, county court, board of supervisors, or to the governor, or any other officer or person or persons, by whatever form of conveyance, for the use and benefit of any county, shall be good and valid, to all intents and purposes, to vest in such county, in fee simple or otherwise, all such right, title, interest and estate as the grantor or grantors in any such deed or conveyance had, at the time of the execution thereof, in the land conveyed and intended thereby to be conveyed. [Revised Stat. 1845, p. 132, § 14.]

30. Contracts, etc.—Rights of county—Suits.] § 30. All notes, bonds, bills, contracts, covenants, agreements or writings, made or to be made, whereby any person is or shall be bound to the People of the State of Illinois, or to any county or the inhabitants thereof, or to the county commissioners, county commissioners' court, or county court, or the board of supervisors, or to the governor, or any other officer or person, in whatever form, for the payment of money, or any debt or duty, or the performance of any matter or thing to or for the use of any county, shall be as valid and effectual, to all intents and purposes, to vest in said county all the rights, interest and actions which would be vested in any individual, if any such contract had been made directly to him. Suits may be commenced, sued and prosecuted thereon in the name of said county, as is provided herein, or in

the name of the officer or person to whom they are made, to the use of the county, as fully and effectually, to all intents and purposes, as any person may or can upon like notes, bills, bonds, contracts, agreements or writings made to him. [Revised Stat. 1845, p. 132, § 16.]

31. Venue of suits by or against County.] § 31. All actions, local or transitory, against any county, may be commenced and prosecuted to final judgment in the circuit court, or any court of general jurisdiction in the county against which the action is brought. Any action, local or transitory, in which any county shall be plaintiff, may be commenced and prosecuted to final judgment in the county in which the defendant in such action resides. [Revised Stat. 1845, p. 132, § 18.]

32. Jurors and witnesses.] § 32. In all actions brought by or against any county, the inhabitants of the county so suing or being sued may be jurors or witnesses, if otherwise competent or qualified according to law. [Revised Stat. 1845, p. 132, § 18.]

33. Duty of county board to prosecute and defend suit.] § 33. It shall be the duty of the county boards of each of the counties of this State to take and order suitable and proper measures for the prosecuting and defending of all suits to be brought by or against their respective counties, and all suits which it may become necessary to prosecute or defend to enforce the collection of all taxes charged on the state assessment. [Revised Stat. 1845, p. 133, § 19.]

34. How judgment against county paid.] § 34. Executions shall not, in any case, issue against the lands or other property of a county; but when judgment is rendered against a county the county board shall direct an order to be drawn on the county treasurer for the amount of the judgment and costs—which order shall be paid as other county debts.

A. Whenever a county board in any county shall in any year determine the amount of all taxes to be raised for county purposes, such board shall include among the purposes for which such taxes are to be raised the payment of any outstanding judgment or judgments against such county for the payment of which no other provisions have been made.

B. The county board may provide for the payment of any such judgment or judgments and the interest thereon in equal annual installments, not exceeding, however, ten (10) in number, and may include one of such installments in the amount of taxes to be raised for county purposes in each year, but the aggregate amount of all taxes to be raised for county purposes shall not in any year exceed the rate of seventy-five (75) cents on the

one hundred dollars (\$100) valuation of property unless authorized by a vote of the people of the county. [As amended by Act approved May 13, 1905. In force July 1, 1905. Laws 1905. p. 134.

35. Auditing claims against county—Appeal.] § 35. Before any claim against a county is audited and allowed, the claimant or his agent shall verify the same by his affidavit, stating that the several items therein mentioned are just and true, and the services charged therein, or articles furnished, as the case may be, were rendered or furnished as therein charged, and that the amount claimed is due and unpaid after allowing all just credits. And when the claim of any person against a county is disallowed, in whole or in part, by the county board, and the nature of the claim is not such that the allowance is discretionary with the county board, such person may appeal from the decision of such board to the circuit court of the same county, upon filing bond with the clerk of such court within twenty days after the rendition of the decision, with such security as shall be approved by such clerk, in the penal sum of \$250, payable to the People of the State of Illinois, for the use of such county, conditioned that he will prosecute the appeal with effect, and pay all costs that may be adjudged against him.¹ [Laws 1851, p. 193, § 1.

36. Summons.] § 36. Upon such bond being filed with the in like form, as near as may be, as in cases of appeals from justices of the peace, which shall be served as other summons said clerk, he shall issue a summons against the county board,

37. Transcript—Filing same.] § 37. The county clerk shall, within ten days after the service of such summons, make out a certified copy of the decision appealed from, and transmit the same, together with all the papers in his possession apper-

(1) An appeal may be taken from the decision of the board of supervisors in regard to the allowance of an account. See Knox Co. v. Arms, 22 Ill. R., 175. This case was an appeal from the board of supervisors.

If a claim for services rendered to the poor of a county or township, be disallowed by the county board, in whole or in part, the claimant may appeal, or, at his option, bring an action against the county. So held in Indiana. Bartholomew v. Wright, 12 Ind. R., 187.

Form of Affidavit of Correctness of Claim.

State of Illinois, }
County, } ss.
A. B., being duly sworn, on oath, deposes and says that the several items mentioned in the annexed claim of —, against county, are just and true, and the services charged therein [or articles furnished] were rendered [or furnished] as therein charged and stated, and that the amount claimed is due and unpaid after allowing all just credits.
A. B.
Subscribed and sworn to before me this — }
day of —, A. D. 19—. }
C. D., J. P }

taining to such decision, to the clerk of the circuit court, who shall file the same in his office and docket the case as in other cases of appeals. [Laws 1851, p. 193, § 2.]

38. Time of fixing compensation of county officers.] § 38. The time of fixing the compensation of county officers whose compensation is to be fixed by the county board, shall be at the meeting of such board next before the regular election of the officers whose compensation is to be fixed; but in case where such compensation is not fixed, the board shall proceed, at the next regular or special meeting held thereafter, to fix such compensation.¹ [See Const., Art. 10, § 10, p. 70.]

39. Funds kept separate.] § 39. Whenever a tax is levied for the payment of a specific debt, the amount of such tax collected shall be kept as a separate fund in the county treasury, and expended only in the liquidation of such indebtedness.

Form of Appeal Bond to Circuit Court in Appeal from Decision of County Board.

Know all men by these presents, that A. B. and C. D. are held and firmly bound unto the People of the State of Illinois, for the use of _____ county, in the penal sum of *two hundred and fifty* dollars, lawful money of the United States of America, for the payment of which well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Witness our hands and seals this ____ day of _____, A. D. 19—.

The condition of this obligation is such, that whereas on the ____ day of _____, A. D. 19—, the above bounden A. B. presented a claim for allowance, duly verified, in favor of _____ and against the county of _____ to the county board of said county, the allowance of which was not discretionary with said county board; and which claim the said county board of said county disallowed in whole [*or in part*], from which decision the said A. B. has taken an appeal to the circuit court of the county of _____ aforesaid. Now, if the said A. B. will prosecute his said appeal with effect and pay all costs that may be adjudged against him, then this obligation to be void, otherwise to remain in full force and effect.

Bond and security approved by me this _____	}	C. D., [SEAL.] A. B., [SEAL.]
day of _____, A. D. 19—. J. K.,		
Clerk Circuit Court of _____ county.]		

(1) On the subject of fixing the compensation of county officers, the Constitution declares, Art. X, § 10: The county board, except as provided in § 9 of this article [Cook county] shall fix the compensation of all county officers, with the amount of their necessary clerk hire, stationery, fuel and other expenses, and in all cases where fees are provided for, said compensation shall be paid only out of, and shall in no instance exceed, the fees actually collected; they shall not allow either of them more per annum than \$1,500, in counties not exceeding 20,000 inhabitants; \$2,000 in counties containing 20,000 and not exceeding 30,000 inhabitants; \$2,500 in counties containing 30,000 and not exceeding 50,000 inhabitants; \$3,000 in counties containing 50,000 and not exceeding 70,000 inhabitants; \$3,500 in counties containing 70,000 and not exceeding 100,000 inhabitants; and \$4,000 in counties containing over 100,000 and not exceeding 250,000 inhabitants; and not more than \$1,000 additional compensation for each additional 100,000 inhabitants: Provided, that the compensation of no officer shall be increased or diminished during his term of office. All fees or allowances by them received, in excess of their said compensation, shall be paid into the county treasury.

Provided, that any surplus remaining in the treasury after full payment of such indebtedness shall be transferred to the common fund of the county. [Laws 1863, p. 41, § 1.

40. Issuing county bonds.] § 40. When the county board of any county shall deem it necessary to issue county bonds to enable them to perform any of the duties imposed upon them by law, they may, by an order, entered of record, specifying the amount of bonds required, and the object for which they are to be issued, submit to the legal voters of their county, at any general election, the question of issuing such county bonds. The amount of the bonds so issued shall not exceed, including the then existing indebtedness of the county, five per centum on the value of such taxable property of such county, as ascertained by the assessment for the State and county tax for the preceding year. Said vote shall be by ballot, on which shall be written or printed "For county bonds," or "Against county bonds," and if a majority of the votes at such election on that question shall be "For county bonds," such county board shall be authorized to issue such bonds of not less than twenty-five dollars (\$25), nor more than one thousand dollars (\$1,000) each, payable respectively, in not less than one, nor more than twenty years, with interest, payable annually or semi-annually, at the rate of not more than eight per cent per annum. [As amended by Act approved May 31, 1879. In force July 1, 1879. Laws 1879, p. 88.

41. Neglect of duty.] § 41. If any member of the county board of any county in this State shall wilfully neglect to perform any of the duties which are or shall be required of him by law, as a member of the county board, he shall, for every such

The word compensation, as used in the Constitution, § 10, Art. X, and of the statute enacted to carry the same into effect, refers only to the compensation of the officer for his personal services, and does not embrace the allowance which may be made for necessary clerk hire, stationery, fuel, etc. There is no limitation imposed by the Constitution upon the power of the county board to change, from time to time, during the term of the county officer, the amount allowed for these latter purposes as circumstances may show to be necessary. Opinion Att'y Gen'l Edsall, Jan. 22, 1878.

Where the county board fails to fix the compensation of the county clerk, elected after the adoption of the Constitution of 1870; he is not entitled to appropriate any of the fees of his office to his own use until the amount of his compensation is fixed. And where the board has once acted, and fixed the compensation of the county clerk, that compensation cannot be increased or diminished during his term. *Purcell v. Parks*, 82 Ill. R., 346.

The words "county board," as used in the Constitution, and required to fix the compensation of county officers, means the body of persons to whom is intrusted the transaction of county business, and the term embraces as well county courts, as board of supervisors and courts of county commissioners. *Hughes et al. v. The People*, use, etc., 82 Ill. R., 78.

The county board has power to increase the allowance made to the county clerk for clerk hire at any time during his term of office, in case they find the allowance already made is insufficient. Where one county board has made a settlement with the county clerk as to the amount he is to receive for clerk hire for past services, I think such settlement is binding upon their successor. The clerk's own compensation cannot be changed during his term of office. Opinion Att'y Gen'l Edsall, Aug. 6, 1877.

offense, forfeit the sum of \$200, to be recovered in an action of debt, before any justice of the peace of the county.¹ [See Revised Stat., chap. 38, § 208; Revised Stat., chap. 102, § 1, 4; Laws 1861, p. 238, § 19.]

PROVISIONS SPECIALLY APPLICABLE TO THE BOARD OF
COUNTY COMMISSIONERS IN COUNTIES NOT
UNDER TOWNSHIP ORGANIZATION.

- 42. Commission—Oath.
- 43. Meetings.
- 44. Chairman.
- 45. Quorum—Chairman pro tem.
- 46. County board successor to county court.
- 47. Supervision of highways, etc.
- 48. Administering oaths.
- 49. Acts legalized.

42. Commission—Oath.] § 42. Each member of the board of county commissioners shall be commissioned by the governor, and shall, before entering upon the duties of his office, take and subscribe the following oath, which shall be filed in the office of the county clerk:

I do solemnly swear [*or affirm, as the case may be,*] that I will support the constitution of the United States, and the constitution of the state of Illinois, and that I will faithfully discharge the duties of the office of county commissioner of —— county, according to the best of my ability.

43. Meetings.] § 43. The board of county commissioners shall hold regular sessions for the transaction of the business of the county, on the third Mondays of December, March, June and September, the second Monday of July of each year, and at such other times as may be provided by law, and may hold special sessions on the call of the chairman, or any two members of said board, whenever the business of the county requires it. [As amended by Act approved June 1, 1889. In force July 1, 1889. Laws 1889, p. 108.]

44. Chairman.] § 44. At the session of said commissioners in December of each year, they shall elect one of their number chairman for the ensuing year, who shall preside at their sessions and perform such duties as are or may be prescribed by law or by the order of said board.

45. Quorum—Chairman pro tem.] § 45. A majority of the members of said board shall constitute a quorum to do business, and, in the absence of the chairman, a chairman *pro tem* may be appointed.

46. County board successor to county court.] § 46. The

(1) Municipal corporations, such as counties, being created for governmental purposes, where they exercise the functions of subscribing in aid of railways under statutes, the power to do so, must be clearly conferred, but strictly pursued. *Harding v. Rockford, R. I. & St. L. Co. et al.*, 65 Ill. R., 90.

board of county commissioners shall be the successor of the county court in relation to all matters concerning county affairs, and where, in any county not under township organization, the county court is authorized to do any act or make any contract on behalf of the county, such authority shall be vested in said board.

47. Supervision of highways, etc.] § 47. Such board shall have general supervision of all highways, roads and bridges in the county, including State roads.

48. Administering oaths.] § 48. The chairman or any member of the board of county commissioners may administer oaths to persons, concerning any matter submitted to the board, or connected with their powers or duties.

49. Acts legalized.] § 48½. All acts heretofore done by boards of county commissioners, which might have been done by county courts in counties in which the said courts have not continued to do the business of said counties, are hereby legalized.

PROVISIONS SPECIALLY APPLICABLE TO THE BOARD OF SUPERVISORS IN COUNTIES UNDER TOWNSHIP ORGANIZATION.

- 50. Annual and regular meetings.
- 51. Special meetings.
- 52. Organization of county board.
- 53. Certificate of election.
- 54. Quorum—Majority vote.
- 55. Open doors.
- 56. Administering oaths.
- 57. Appropriations for roads and bridges.
- 58. Boundaries of towns—New towns, etc.
- 59. Naming towns.
- 60. Committee to approve official bonds.

50. Annual and regular meetings.] § 49. The annual meetings of the board of supervisors shall be holden on the second Tuesday of September in each and every year, at the county seat; and if the court house be convenient, shall be held therein. A regular meeting of the board shall be held on the second Monday of June of each and every year, at the county seat, and at such other times as may be prescribed by law. [As amended by Act approved and in force April 22, 1899. Laws 1899, p. 363.]

51. Special meetings.] § 50. Special meetings of the board of supervisors shall be held only when requested by at least one-third of the members of the board, which request shall be in writing, addressed to the clerk of the board, and specifying the time and place of such meeting, upon reception of which the clerk shall immediately transmit notice, in writing, of such meeting, to each of the members of the board. The clerk shall also

cause notice of such meeting to be published in some newspaper printed in the county, if any there be. [Laws 1861, p. 236, § 2.]

52. Organization of county board.] § 51. The board of supervisors, at their first meeting in every year, shall organize by choosing one of their members as chairman, who shall preside at all meetings of the board during the year. In case of his absence at any meeting, the members present shall choose one of their number as temporary chairman.¹ [Laws 1861, p. 236, § 4.]

53. Certificates of election.] § 52. The supervisors shall severally lay before the board, at the first meeting after the election, their several certificates of election, which shall be examined by the board, and if found regular, shall be filed in the office of the county clerk. [Laws 1861, p. 236, § 5.]

54. Quorum—Majority vote.] § 53. A majority of the supervisors of any county shall constitute a quorum for the transaction of business; and all questions which shall arise at meetings shall be determined by the votes of the majority of the supervisors present, except in such cases as is otherwise provided. [Laws 1861, p. 237, § 7.]

(1) The board of supervisors have no power to perform official acts except as a board. County Com'rs Randolph Co. v. Jones, Breese R., 237; Lynch v. Hartwell, 8 Johns R., 422. When acting as a board in the line of their duty, the county is bound by their acts. Vermilion Co. v. Knight, 1 Scam. R., 97.

Organization of the board and business.—The board of supervisors may elect a temporary chairman, whether there is a regular chairman in existence or not, and any meeting of the board at which a quorum is present must be regarded as valid. Town of Ottawa v. County of LaSalle, 11 Ill. R., 654. That is if regularly called in pursuance of law. The board of supervisors is intended to be organized as a deliberative body. In the absence of any special rules which they may adopt for their government, they will be governed by the general rules of parliamentary law. See post, appendix. Like all other bodies of the kind, they should perform their work through the aid of committees. The chairman or presiding officer appoints all committees, unless the assembly directs otherwise. Committees should consist of odd numbers, as three, five, seven or more. Committees are appointed with reference to the subjects of which the assembly has cognizance.

The standing committees of a board of supervisors are usually the following: accounts; equalization of assessment; education; finance; jury list; poor and poor farm; public buildings; refunding taxes; roads and bridges.

The first member named on a committee is the chairman, whose duty it is to regulate and preside at their meetings, and make a report of their conclusions.

Select committees are sometimes appointed to consider a particular subject, where it is desired to give it special attention. It is the rule that the person moving a select committee should be first named as a member of it.

The report of a committee embodies their conclusions concerning the subject referred. It may be verbal or written. The formal words of a written report are as follows:

Form of Report of Committee.

The committee on accounts [*or, as the case may be*], to whom was referred the matter of [*state the matter referred*] have had the same under consideration, and beg leave to report that [*here set forth the conclusions of the committee*].

All of which is respectfully submitted.

The report may be signed by the chairman, under the direction of the committee, or by the members individually. All the members of a committee should have notice of their meeting, after which a majority may act and report.

When a report is made there are two questions upon it: 1. Its acceptance. 2. Its adoption. A report is presumed to be accepted, and no motion to that effect is necessary. The question should be on its adoption. Concerning general parliamentary rules, see post, appendix.

55. Open doors.] § 54. The board of supervisors shall sit with open doors, and all persons may attend their meetings. [Laws 1861, p. 237, § 8.]

56. Administering oaths.] § 55. Every chairman of the said board shall have power to administer an oath to any person, concerning any matters submitted to the board, or connected with their powers and duties, *and any member of said board shall have power to administer the oath required by law to any claimants presenting a claim against the county to be passed on by said board: Provided, that any member so administering an oath to such claimant shall not be allowed to charge a fee therefor.* [As amended by Act approved May 14, 1903. In force July 1, 1903. Laws 1903, p. 137.]

57. Appropriations for roads and bridges.] § 56. Said board shall have power to appropriate funds to aid in the construction of the roads and bridges in any part of the county, whenever a majority of the whole board of the county may deem it proper and expedient. [See "Roads and Bridges," § 35, *ante* p. 144. Laws 1861, p. 236, § 6, part 4.]

58. Boundaries of towns—New towns, etc.] § 57. Said board shall also have power to change the boundaries of towns, and to create new towns in their respective counties, in manner provided by law; to designate and give names thereto, and to fix the place of holding the first town meeting therein.¹ [See "Township Organization Act," Art. III, *ante* p. 42. Laws 1861, p. 236, § 6, part 5.]

59. Naming towns.] § 58. Whenever the board of supervisors shall create a new town, or change the name of an existing town, the proceedings in giving a name to such new town, or changing the name of an existing town, shall be as follows: The proposed name to be given to such new town, or existing town, shall be filed in the office of the auditor of public accounts, there to be retained for at least one year; and the auditor of public accounts, at any time after the filing of such proposed name, shall, upon application of said board, grant his certificate stating that such proposed name, from information appearing in his office, has not been adopted by any city, town, village or municipal corporation in this State; which certificate must be obtained by said board before any action whatever shall be taken by said board toward making such change of name; and all proceedings instituted in any court or other place, under a name changed, without complying with the provisions of this section, shall be held to be void and of no effect. If such name has been adopted elsewhere in this State, the Auditor of Public Accounts shall so notify the board, whereupon another

(1) The manner provided for changing the boundaries of towns and creating new towns, will be found, *ante* p. 41, Art. 3, § 1.

name shall be filed in his office, which shall there remain in like manner as hereinbefore provided, and the certificate shall be issued by the Auditor of Public Accounts immediately after such filing, stating that such name had not been elsewhere adopted; whereupon said board may proceed to make such change of name, and not before; and all proceedings pending, and all rights and privileges acquired in the name of such town, by such town, or by any person residing therein, shall be secured to such town or person, and such proceedings continued to final consummation in such name, the same as though the same had not been changed. [Laws 1861, p. 238, § 16.]

60. Committee to approve official bonds.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That in all cases where official bonds are required by law to be approved by the board of supervisors, in counties under township organization, such board may select a committee for that purpose, which committee shall have full power and authority to act, and its act have the same force and effect as if done by the board in session. [Approved June 17, 1887. In force July 1, 1887. Laws 1887, p. 156.]

SPECIAL PROVISIONS APPLICABLE TO THE BOARD OF COUNTY COMMISSIONERS OF COOK COUNTY.

AN ACT to revise the law in relation to the election of county commissioners in Cook county and to fix their term of office. [Approved June 15, 1893. In force July 1, 1893. Laws 1893, p. 92.]

- 61. Fifteen Commissioners.
- 62. President of Board.
- 63. Vacancy in office of President.
- 64. Terms of office.
- 65. Repeal.
- 66. Powers and Duties—Meeting.

61. Fifteen county commissioners.] § 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly:* On the first Tuesday after the first Monday of November, A. D. 1914, and every four years thereafter, there shall be elected by the legal voters of Cook county fifteen county commissioners who shall hold their office respectively for the term of four years and until their successors are elected and qualified. Their term of office shall commence on the first Monday of December after their election. Ten of said commissioners shall be elected from the city of Chicago by the legal voters of said city, and five of said commissioners shall be elected from the towns outside of said city by the legal voters of said towns. [As amended by Act approved June 25, 1913. In force July 1, 1913. Laws 1913, p. 202.]

62. President of board.] § 2. Every legal voter in said county may vote for and designate (upon his ballot cast for county commissioners) one of the candidates for commissioner to be presi-

dent of the county board, and the person who shall receive the highest number of such votes shall be declared elected president of said board.

63. Vacancy in office of president.] § 3. In case of the death, resignation, removal from office or other inability to act of the president so elected, the board of commissioners shall elect one of their number to fill the unexpired term of said president.

64. Terms of office.] § 4. The terms of office of said commissioners shall begin on the first Monday of December after their election, and they shall hold their office respectively until their successors are elected and qualified. Each of the commissioners shall have been a resident of said county for five years next preceding his election.

65. Repeal.] § 5. All laws and parts of laws in conflict with the provisions of this Act are hereby repealed.

66. Powers and duties—Meeting.] § 61. The said commissioners shall, severally, before they enter upon the discharge of their duties, take the oath of office prescribed by the Constitution, and they shall be known as the Board of Commissioners of Cook county, and as such board shall possess the powers, perform the duties and be subject to the rules, regulations and restrictions hereinafter specified, that is to say:

First—Said board of commissioners shall hold regular meetings on the first Monday of December, January, February, March, June and September in each year. It shall be the duty of the president of the board of commissioners to call special meetings of the board whenever in his opinion the same may be necessary; and he shall preside at all of the meetings of said board, and generally perform the duties usually performed by a presiding officer: *Provided*, that in the absence of the president, or of his inability to act, a president *pro tempore* may be elected, who shall during such absence or inability, possess all the powers and perform all the duties by law vested in and required of the president.

Second—the president of the board of commissioners shall have the same privilege of voting as any other commissioner; but he shall not have a casting vote upon any question upon which he has voted as commissioner.

Third—All resolutions or motions whereby any money shall be appropriated or by virtue of which any contract shall be made or any act done which may, directly or indirectly, or in any manner whatever, create any pecuniary liability on the part of said county, shall be submitted to said board of commissioners in writing, or reduced to writing, before any vote shall be taken thereon; and if adopted by the board, the same shall not take effect until after the

same shall have been approved in writing by the president of said board, except as hereinafter provided. It shall be the duty of the clerk of said board to deliver to the president thereof, upon his request, the original (or a copy) of each resolution or motion, so passed or adopted by said board as aforesaid within one day after its passage or adoption; and in case the president approves thereof, he shall sign the same and it shall thereupon be in full force and effect. In case the president shall not approve any such resolution or motion, he shall, within five days after the receipt of the same as aforesaid, return it to the clerk of the said board, with his objections thereto in writing. Such veto by the president may extend to any one or more items or appropriations contained in any resolution making an appropriation, or to the entire resolution; and in case the veto only extends to a part of such resolution making an appropriation the residue thereof not embraced within the veto shall take effect and be in force from the time of the receipt by said clerk of such veto of such part. Upon the return of any such resolution or motion by the president, with his objections thereto as aforesaid, the vote by which the same was passed shall be reconsidered by the board of commissioners as to so much thereof as may have been vetoed; and if, after such reconsideration, four-fifths of all the members elected to the board shall agree to pass the same by yeas and nays, to be entered on the journal, the same shall take effect, notwithstanding the president may have refused to approve thereof. In case the president shall fail or omit to either sign and approve or return, with his objections as aforesaid, any such motion or resolution which shall have been passed or adopted by the board within six days after it shall have been so passed or adopted, the same shall take effect without the approval of the president.

Fourth—Said board of commissioners shall have the management of the affairs of said Cook county in the manner provided by law, and may exercise the same powers, perform the same duties, and shall be subject to the same rules, regulations and penalties prescribed by law for the board of supervisors in other counties, except as herein otherwise provided; and shall also be subject to the rules, regulations and restrictions herein provided.

Fifth—The said board of commissioners shall have no power or authority to delegate to any committee or other person or persons the “power to act” when such “power to act” shall involve the letting of any contract or the expenditure of public money exceeding the sum of five hundred dollars (\$500); and any action of said board, or of any committee thereof, or of any other person or persons in violation of this section, shall be null and void. No money shall be appropriated or ordered paid by said county commissioners beyond the sum of five hundred dollars (\$500) unless such appropriation shall have been authorized by a vote of at least two-thirds

of the members elected to the said county board. And no officer of Cook county or other person shall incur any indebtedness on behalf of the county unless first authorized by said board of commissioners.

Sixth—Said board of commissioners shall, within the first quarter of each fiscal year, adopt a resolution, to be termed the annual appropriations bill, in and by which resolution said board shall appropriate such sums of money as may be necessary to defray all necessary expenses and liabilities of said Cook county, to be by said county paid or incurred during and until the time of the adoption of the next annual appropriation bill under this section: *Provided*, that said board shall not expend any money or incur any indebtedness or liability on behalf of said county in excess of the percentage and several amounts now limited by law, and based on the limit prescribed in the Constitution, when applied to the last previous assessment. Said appropriation bill shall specify the several objects and purposes for which such appropriations are made, and the amount appropriated for each object or purpose. If the Legislature shall by law provide, or shall at any time appear to have by law provided, for the publication of the assessment of real or personal property, or both, to be paid for out of the county treasury, then said board of commissioners shall in each year, while such publication is required, make due provision for the cost thereof by sufficient appropriation in such resolution, which said appropriation shall take precedence over all other appropriations contained in such resolution, excepting the provision for principal and interest of county indebtedness, the ordinary, current salaries of county officials and employes, the maintenance of county property and institutions (including courts and juries), dieting occupants of the jails, prisons, hospitals and industrial schools, and the cost of elections required by law. Such appropriations shall take precedence of any appropriation for contingent fund or building fund; and if the tax actually collected in any such year shall be less than the total amount of the appropriations contained in said resolution, the items of appropriation following in such resolution after such appropriation for publishing assessments, in the order herein directed, shall be first abated, before the appropriation for such publication of tax assessments shall be reduced. The vote of said board of commissioners upon said appropriation bill shall be taken by yeas and nays, and the same shall be entered upon the journal. Such appropriation bill shall not take effect until after it shall have been once published in a newspaper published in Chicago, and said board shall provide for and cause said appropriation bill to be published as aforesaid. After the adoption of such appropriation bill or resolution, the said board of commissioners shall not make any further or other appropriations

prior to the adoption or passage of the next succeeding annual appropriation bill, and the said board of commissioners shall have no power, either directly or indirectly, to make any contract or to do any act which shall add to the county expenditures or liabilities in any year, anything or sum over and above the amount provided for in the annual appropriation bill for that fiscal year. No contract shall hereafter be made, or expense or liability incurred by the said board of commissioners, or any member or committee thereof, or by any person or persons, for or in its behalf, notwithstanding the expenditure may have been ordered by the said board of commissioners, unless an appropriation therefor shall have been previously made by said board in manner aforesaid: *Provided, however,* that nothing herein contained shall prevent the board of commissioners, by a concurring vote of four-fifths of all the commissioners (said votes to be taken by yeas and nays and entered upon the journal) from making any expenditure or incurring any liabilities rendered necessary, by any unforeseen casualty by fire, flood or otherwise, happening after the annual appropriation bill shall have been passed or adopted. Nor shall anything herein contained be construed to deprive the board of power to provide for and cause to be paid from the county funds any charge upon said county imposed by law, without the action of the board of commissioners, including fixed salaries of officers required by law to be paid from the county treasury, and to pay jurors' fees and other charges fixed by law.

Seventh—The board of commissioners shall establish and provide for the appointment of a committee on finance and a committee on public service. There shall be a superintendent of public service, to be appointed by the president, by and with the consent of the board of commissioners, who shall hold his office for one year and until his successor is appointed. He may be suspended or removed by the president. He shall give a sufficient bond for the performance of his duties and be subject to the oversight and supervision of the committee on the public service. It shall be the duty of the superintendent, under authority of the board of commissioners, to purchase, receive and distribute all supplies necessary for the use and service of Cook county and its various institutions, of whatever nature, including all supplies necessary for dieting the prisoners confined in the jail of said county, and, to keep, on and after the first Monday in December, 1910, accurate accounts of and vouchers for the same, which shall be open to the inspection of the president and the committee on public service and to the public. He shall also perform all other duties relative to the public service which may be assigned to him by the board of commissioners, who shall make and maintain regulations for the conduct and government of the department of public service not inconsistent with this Act. [As amended by Act approved June 8, 1909. In force July 1, 1909. Laws 1909, p. 149.]

Eighth—All contracts for supplies, material and work for the County of Cook shall be let to the lowest responsible bidder, after due advertisement; but if in case of any emergency, it is necessary to purchase supplies not exceeding in amount \$500, such purchase may be made by the superintendent in the open market, on authority given to him by the board of commissioners or the committee on public service. All contracts for supplies, material or work for Cook county shall be approved by the board of commissioners and signed by the president of the board, the superintendent of public service and the comptroller. Supplies shall be issued only on the requisitions of the responsible officers of the county institutions now or hereafter established by law, approved by the committee on public service.

Ninth—All officers and employes of the County of Cook, in the classification hereinafter provided for, except those whose election or appointment is otherwise provided for by law, and except those enumerated in paragraph twentieth of this section, shall be appointed by the president of the board, according to the provisions of this section. The salaries or rate of compensation of all officers and employes of said county, when not otherwise provided by law, shall be fixed by the board of commissioners and shall be fixed prior to the adoption of the annual appropriation, and shall not be changed during the year for which the appropriation is made. The board of commissioners shall also determine whether any or what amount of bond any officer or employe shall give.

Tenth—Civil Service Commission.] The president of the county board shall at the first regular meeting of the first day after July, A. D. 1895, appoint three persons, who shall constitute and be known as the civil service commission of said county; one for a term ending on the first Monday of December, A. D. 1895; one for a term ending on the first Monday of December, A. D. 1896; and one ending on the first Monday of December, A. D. 1897, and until their respective successors are appointed and qualified. And at the respective dates above named, or soon thereafter, the president shall in like manner appoint one person as the successor, or a commissioner, whose term shall then expire, to serve as a commissioner for three years, and until his successor is in like manner appointed and qualified. Two commissioners shall constitute a quorum. All appointments to such commission, both original and to fill vacancies, shall be so made that not more than two members shall at the time of appointment be members of the same political party. Said commissioner shall hold no other lucrative office or employment under the United States, the State of Illinois, or any municipal corporation or political division thereof. Each commissioner before entering upon the duties of his office, shall take the oath prescribed by the Constitution of this State.

Eleventh—Removal of Commissioners—Vacancy.] The president may, in his discretion, remove any commissioner for incompetence, neglect of duty or malfeasance in office. The president shall at the next regular meeting report in writing any such removal to the board with his reasons therefor. Any vacancy in the office of civil service commissioner shall be filled by appointment by the president.

Twelfth—Classification.] Said commissioners shall classify all the offices and places of employment in said county with reference to the examination hereinafter provided for, except those offices and places mentioned in the twentieth paragraph in this section. The offices and places so classified by the commission shall constitute the classified civil service of said county, and no appointments to any of such offices or places or removals therefrom shall be made, except under and according to the rules hereinafter mentioned.

Thirteenth—Rules.] Said commission shall make rules to carry out the purposes of this Act, and for examinations, appointments and removals in accordance with its provisions, and the commission, may from time to time, make changes in the original rules.

Fourteenth—Publication of Rules—Time of Taking Effect.] All rules made as hereinbefore provided, and all changes therein, shall forthwith be printed for distribution by said commission; and the commission shall give notice of the place or places where said rules may be obtained, by publication in one or more daily newspapers published in such county; and in each such publication shall be specified the date, not less than ten days subsequent to the date of such publication, when said rules shall go into operation.

Fifteenth—Examinations.] All applicants for offices or places in said classified service, except those mentioned in the twentieth paragraph of this section, shall be subjected to examination, which shall be public, competitive, and free to all citizens of the United States, with specified limitations as to residence, age, health, habits and moral character. Such examinations shall be practical in their character and shall relate to those matters which will fairly test the relative capacity of the persons examined to discharge the duties of the positions to which they seek to be appointed, and shall include tests of physical qualifications and health, and when appropriate, of manual skill. No questions in any examination shall relate to political or religious opinion or affiliation. The commission shall control all examinations and may, when an examination is to take place, designate a suitable number of persons, either in or not in the official service of said county, to be examiners; and it shall be the duty of such examiners, and, if in the official service, it shall be a part of their official duty, without extra compensation, to conduct such examination as the commission may direct, and make return or report

thereof to said commission; and the commission may at any time substitute any other person, whether or not in such service, in the place of any one selected; and the commission may themselves, at any time, act as such examiners, and without appointing examiners. The examiners at any examination shall not all be members of the same political party.

Sixteenth—Notice of Examinations.] Notice of the time and place and general scope of every examination shall be given by the commission by publication for two weeks preceding such examination, in a daily newspaper of general circulation published in said county, and such notice shall also be posted by said commission in a conspicuous place in their office for two weeks before such examination. Such further notice of examination may be given as the commission shall prescribe.

Seventeenth—Registers.] From the returns or reports of the examiners, or from the examinations made by the commission, the commission shall prepare a register for each grade or class of positions in the classified service of said county, of the person whose general average standing upon examination for such grade or class is not less than the minimum fixed by the rules of such commission, and who are otherwise eligible; and such persons shall take rank upon the registers as candidates in the order of their relative excellence, as determined by examination, without reference to priority of time of examination. Said commission may strike off names of candidates from the register after they have remained thereon for more than two years.

Eighteenth—Promotions.] The commission shall, by its rules, provide for promotion in such classified service, on the basis of ascertained merit, examination and seniority in service, and shall provide, in all cases where it is practicable, that vacancies shall be filled by promotion. All examinations for promotion shall be competitive among such members of the next lower rank as desire to submit themselves to such examination; and it shall be the duty of the commission to submit to the appointing power the names of not more than three applicants for each promotion having the highest rating. The method of examination and the rules governing the same, and the method of certifying shall be the same as provided for applicants for original appointment.

Nineteenth—Appointments to Classified Service.] The head of the institution, department or office in which a position classified under this Act is to be filled, shall notify the president of the board and said commission of that fact, and said commission shall certify to the appointing officer the name and address of the candidate standing highest upon the register for the class or grade said position belongs to, except that in case of laborers, where a choice by

competition is impracticable, said commission may provide by its rules that the selection may be made by lot from among those candidates proved fit by examination. In making such certification, sex shall be disregarded, except when some statute, the rules of said commission or the appointing power specifies sex. Said appointing officer, meaning thereby the president of said board, shall notify said commission of each position to be filled separately, and shall fill such place by the appointment of the person certified by said commission therefor, which appointment shall be on probation for a period to be fixed by said rules. At or before the expiration of the period of probation, the officer having the power of appointment may, with the consent of said commission, discharge such person so appointed on probation, upon assigning in writing to said commission his reasons therefor.

Twentieth—Exemptions.] The president of the board of commissioners of Cook county shall, with the advice and consent of the board, appoint the warden of the county hospital, the superintendent of the insane asylum and poor house, the county agent, the county physician, the custodians of court house and criminal court building, the county attorney, the county architect, the committee, clerk of the county board, and the said officers and the superintendent of public service shall not be included in the said classified service.

Twenty-first—Removals and Reduction.] Removals from the classified service or reduction in grade of compensation, or both, may be made in any department of the service by the head of such department, for any cause which will promote the efficiency of the service; but only on written specifications by the officer making the removal or reduction; and the person sought to be removed or reduced shall have notice and shall be served with a copy of the specifications and be allowed reasonable time for answering the same in writing; and a copy of the notice, specifications, answer and of the order of removal or reduction shall be filed with the Civil Service Commission. The said commission shall investigate any removal or reduction which it has reason to believe has not been made in accordance with the provisions of this section; and it may in any case investigate any removal or reduction, and then in accordance with its findings, approve or disapprove the same. The finding and decision of the said commission shall in every case be final, and shall be certified to the appointing officer, and shall be forthwith enforced by such officer. A copy of said papers in each case shall be made a part of the record of the division of the service in which the removal or reduction is made. Nothing in this Act shall limit the power of any officer to suspend a subordinate, without pay, for cause assigned in writing, for reasonable period, not exceeding thirty days. In the course of an investigation of charges,

each member of the Civil Service Commission shall have the power to administer oaths, and shall have the power to secure by its subpoena, both the attendance and testimony of witnesses, and the production of books and papers relevant to such investigation.

Twenty-second—Report To Commission.] Immediate notice in writing shall be given by the appointing power to said commission of all appointments, permanent or temporary, made in such classified civil service, and of all transfers, promotions, resignations or vacancies from any cause in such service and of the date thereof; and a record of the same shall be kept by said commission. When any office or place of employment is created or abolished, or the compensation attached thereto altered, the officer or board making such change shall immediately report it in writing to said commission.

Twenty-third—Investigations.] The commission shall investigate the enforcement of this Act and its rules, and the action of examiners herein provided for, and the conduct and action of the appointees in the classified civil service of said county. In the course of such investigation each commissioner shall have power to administer oaths, and said commission shall have power to secure by its subpoena both the attendance and testimony of witnesses and the production of books and papers relevant to such investigations.

Twenty-fourth—Report of Commission.] Said commission shall on or before the first Monday of September of each year make to the president for transmission to the board of commissioners a report showing its own action, the rules in force, the practical effects thereof, and any such suggestions it may approve for the more effectual accomplishment of the purposes of this Act. The president may require a report from said commission at any time.

*Twenty-fifth—*The Civil Service Commission shall select one of their own number to act as chairman and one as secretary. The secretary shall keep the minutes of its proceedings, preserve all reports made to it, keep a record of all examinations held under its direction and perform such other duties as the commission shall require.

Twenty-sixth—Officers to Aid—Rooms.] All officers of said county shall aid said commission in all proper ways in carrying out the provisions of this Act, and at any place where examinations are to be held shall allow the reasonable use of public buildings for holding such examinations. The board of county commissioners shall cause suitable rooms to be provided for said commission at the expense of said county.

Twenty-seventh—Salaries and Expenses.] Each of said Civil Service Commissioners shall receive a salary of fifteen hundred dollars a year, and said commission may also incur expenses not

exceeding five hundred dollars a year for printing, stationery and other incidental matters.

Twenty-eighth—Appropriations.] A sufficient sum of money shall be appropriated each year by said board to carry out the provisions of this Act in said county. If the board shall have already made the annual appropriation for county purposes for the current fiscal year, the board is authorized and required to pay the salaries and expenses of the Civil Service Commission for such fiscal year out of the moneys appropriated for contingent purposes by said board.

Twenty-ninth—Frauds Prohibited.] No person or officer shall willfully or corruptly, by himself or co-operation with any one or more other persons, defeat, deceive or obstruct any person in respect to his or her right of examination, or corruptly or falsely mark, grade, estimate or report upon the examination or proper standing of any person examined hereunder, or aid in so doing, or willfully or corruptly make any false representation concerning the same or concerning the person examined, or willfully or corruptly furnish to any person any special or secret information for the purpose of improving or injuring the prospects or chances of any person so examined or to be examined being employed or promoted.

Thirtieth—No Officer to Solicit or Recerve Political Contributions.] No officer or employee in the classified civil service of said county or named in the twentieth paragraph of this section, shall solicit, orally or by letter, or receive or pay, or be in (any) manner concerned in soliciting, receiving or paying any assessments, subscriptions or contributions for any party or political purposes whatever.

Thirty-first—No Person to Solicit Political Contributions from Officers or Employees.] No person shall solicit, orally or by letter, or be in any manner concerned in soliciting any assessment, contribution or payment, for any party or for any political purpose whatever, from any officer or employee in the classified civil service of said county or named in the twentieth paragraph of this section.

Thirty-second—Assessments and Contributions in Public Offices Forbidden.] No person shall in any room or building occupied for the discharge of official duties by any officer or employee in the classified civil service of said county, or named in the twentieth paragraph of this section, solicit, orally or by written communication, deliver therein or in any other manner, or receive any contribution of money or other thing of value, for any party or political purpose whatever. No officer, agent, clerk or employee in the classified civil service of said county or named in the twentieth paragraph of this section, who may have charge or control of any building, office or room, occupied for any purpose of said government, shall permit any person to enter the same, for the purpose

of therein soliciting or delivering written solicitations for, or receiving or giving notice of any political assessment.

Thirty-third—Payments of Political Assessments to Public Officers Prohibited.] No officer or employee in the classified civil service of said county or named in the twentieth paragraph of this section shall, directly or indirectly, give or hand over to any officer or employee or to any senator or representative or alderman, councilman or commissioner, any money or other valuable thing on account of or to be applied to the promotion of any party or political object whatever.

Thirty-fourth—Abuse of Political Influence Prohibited.] No officer or employee in said classified service or named in the twentieth paragraph of this section shall discharge or degrade or promote, or in any manner change the official rank or compensation of any other officer or employee, or promise or threaten to do so, for giving or withholding or neglecting to make any contribution of money or other valuable thing for any party or political purpose, or for refusal or neglect to render any party or political service.

Thirty-fifth—Payment For Place Prohibited.] No applicant for appointment in said classified civil service, or to a position named in the twentieth paragraph of this section, either directly or indirectly, shall pay, or promise to pay any money or other valuable thing to any person whatever for or on account of his appointment, or proposed appointment, and no officer or employee in said civil service or named in said paragraph shall pay or promise to pay, either directly or indirectly, any person any money or other valuable thing whatever for or on account of his promotion.

Thirty-sixth—Recommendation In Consideration of Political Service Prohibited.] No applicant for appointment or promotion in classified civil service shall ask for or receive a recommendation for assistance from any officer or employee in said service, or of any person upon the consideration of any political service to be rendered to or for such person or for the promotion of such person to any office or employment.

Thirty-seventh—Auditing Officer.] No accounting or auditing officer shall allow the claim of any public officer for services of any deputy or other person employed in the public service in violation of the provisions of this Act.

Thirty-eighth—Appointments and Removal to Be Certified to the Comptroller.] The commission shall certify to the county clerk or other auditing officers, all appointments to offices and places in the classified civil service, and all vacancies occurring therein, whether by dismissal, resignation or death, and all findings made or approved by the commission under the provisions of the twenty-first paragraph of this section, that a person shall be discharged from the classified service.

Thirty-ninth—Comptroller to Pay Salaries, Only After Certification.] No county clerk, comptroller or other auditing officer of said county shall approve the payment of, or be in any manner concerned in paying any salary or wages to any person for services as an officer or employee of said county unless such person is occupying an office or place of employment according to the provisions of law and is entitled to payment therefor.

Fortieth—Compelling Testimony of Witnesses—Production of Books and Papers.] Any person who shall be served with a subpoena to appear and testify, or to produce books and papers, issued by the commission or by any commissioners or by any board or person acting under the orders of the commission in the course of an investigation conducted either under the provisions of the twenty-first or twenty-third paragraph of this section, and who shall refuse or neglect to appear or testify, or to produce books and papers relevant to said investigation as commanded in such subpoena, shall be guilty of a misdemeanor, and shall, on conviction, be punished as provided in the forty-first paragraph of this section. The fees of witnesses for attendance and travel shall be the same as the fees of witnesses before the circuit courts, and shall be paid from the appropriation for the expenses of the commission. And any circuit court or any judge thereof, either in term time or vacation, upon application of any such commissioner or officer or board may, in his discretion, compel the attendance of witnesses, the production of books and papers, and giving of testimony before the commission, or before any such commissioner, investigating board or officer by attachment for contempt or otherwise in the same manner as the production of evidence may be compelled before said court. Every person who, having taken an oath or made affirmation before a commissioner or officer appointed by the commission authorized to administer oaths, shall swear or affirm willfully, corruptly and falsely, shall be guilty of perjury, and upon conviction shall be punished accordingly.

Forty-first—Penalties.] Any person who shall willfully, or through culpable negligence violate any of the provisions of this Act or any rule promulgated in accordance with the provisions thereof shall be guilty of a misdemeanor and shall, on conviction thereof, be punished by a fine of not less than fifty dollars and not exceeding one thousand dollars, or by imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment in the discretion of the court.

Forty-second—Penalties, Disqualification to Hold Office.] If any person shall be convicted under the next preceding section, any public office or place of public employment, which such person may hold shall, by force of such conviction, be rendered vacant, and such

person shall be incapable of holding any office or place of public employment for the period of five years from the date of such conviction.

Forty-third—What Officers to Prosecute.] Prosecutions for violations of this Act may be instituted either by the Attorney-General, the State's Attorney for the county in which the offense is alleged to have been committed, or by the commission acting through special counsel. Such suits shall be conducted and controlled by the prosecuting officers who instituted them, unless they request the aid of other prosecuting officers. [As amended by Act approved June 8, 1909. In force July 1, 1909. Laws 1909, p. 149.

APPOINTMENT OF PHYSICIAN, ETC., FOR COUNTY.

AN ACT concerning the classified civil service of the County of Cook. [Approved May 16, 1905. In force July 1, 1905. Laws 1905, p. 89.]

- 67. Appointment, etc., of physicians, etc., to be under provisions of section 61.
- 68. County clerk, clerk of the board and ex-officio comptroller—Powers and duty.
- 69. Office of auditor created—Uniform system of books of account in county offices—Reports—Access to books—Assistance.

67. Appointment, etc., of physicians, etc., to be under provisions of section 61.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* The appointment, employment and removal by the Board of Commissioners of Cook County, of all physicians and surgeons and nurses for the care and treatment of the sick, poor and insane of said county shall be made only in conformity to the provisions of § 61 of an Act entitled, "An Act to revise the law in relation to counties." Approved March 31, 1874, as amended by an Act approved June 14, 1887, and as amended by an Act of June 26, 1895, enforced July 1895. The Board of Commissioners of Cook county may provide that such physicians and surgeons be apportioned among the recognized schools of medicine in such proportion as said board may from time to time determine, and may contract with any recognized training school for the nursing of any or all of such insane or sick: *Provided, however,* that all such physicians and surgeons who serve without compensation shall be appointed only for a term of six years, and that the physicians and surgeons usually designated and known as internes shall be appointed only for a term of eighteen months. *And, provided,* that there may also, at the discretion of the board, be a consulting staff of physicians and surgeons, which staff may be appointed by the president, subject to the approval of the board.

68. County clerk, clerk of the board and ex-officio comptroller—Powers and duty.] § 62. The county clerk of Cook county shall be clerk of the board of county commissioners; and all laws applicable to the county clerks of other counties under township organization, shall be applicable to him. He shall, also, *ex officio*, be the comptroller of the county financial affairs, and as such, shall have charge of all deeds, mortgages, contracts, judgments, notes, bonds, debts and choses in action belonging to the said county, except such as are directed by law to be deposited elsewhere, and shall carefully preserve the same; he shall, subject to the approval of the board of commissioners, revise, audit and settle all accounts in which the county is concerned, either as debtor or creditor, or where provision for the settlement thereof is not otherwise provided for by law, and the settlement of which is not especially committed to some other authority; *Provided*, that no payment of any account so settled or adjusted shall be made except by the order of the County Board, after approval by the finance committee. He shall have the power, in making such settlements and adjustments, and for the purpose of ascertaining the true state of any balance or balances so due, to require any claimant or claimants to deposit and file with him, as such comptroller, a statement in writing, under oath, as to any fact, matter or thing concerning the correctness of any account, claim or demand presented. He shall open and keep in a clear, methodical manner a complete set of books, under the direction of the President of the Board and Finance Committee thereof, wherein shall be stated, among other things, the appropriations for the fiscal year for each distinct object and branch of expenditure, and also the estimated receipts from each and every source of revenue, so far as he can ascertain the same. Said books and all papers, vouchers, contracts, bonds, receipts and other things kept in said office, shall be subject to the examination of the President of the Board and of the finance committee. It shall be his duty, at the close of each fiscal year to place to the credit of a general fund all unexpended appropriations for such year, but which shall not include the amount required to liquidate contracts or liabilities entered into by virtue or authority of such appropriation, and which remain unpaid at the close of the fiscal year: *Provided*, that no such disposition shall be made of any trust fund or funds that by law are specific and under the direct control of officers specially appointed for their disbursement. He shall make out an annual statement for publication on or before the first day of February in each year, giving a full and detailed statement of all the receipts and expenditures during the fiscal year. Such statements shall also detail all the liabilities and resources of said county, the condition of all unexpended appropriations and contracts

unfulfilled, and the balance of money then remaining in the treasury, with all sums due and outstanding, and the amounts unaccounted for, and all other things necessary to exhibit the true financial condition of the county, which statement, when examined and approved by the finance committee, shall be published by him as aforesaid. He shall, also, on or before the first Monday of February, in each year, before the annual appropriations are made by the county board, submit to the board a report of the estimates necessary, as nearly as may be, to defray the expenses of the county government during the current fiscal year; he shall, in said report, classify the different objects and branches of said county expenditure, giving as nearly as possible the amount required for each class, and for this purpose it shall be the duty of all county officers and heads of departments to make and furnish the comptroller, on his request, statements of the condition and expenditure of their respective departments and offices, with any desired alterations and improvements, and the probable expense thereof. It shall be the duty of any committee of the board charged with the expenditure of money for buildings or improvements to make and furnish him a similar statement, and of all contracts already made and unfinished, and the amount of any unexpended appropriations of the preceding year. The comptroller shall, in such report, also show the aggregate income of the preceding fiscal year from all sources, the amount of liabilities outstanding upon which interest is to be paid, and of bonds and county debts payable during the fiscal year, and when and where payable. He shall also make and publish monthly statements giving full and detailed accounts of all moneys received and expended for the public service of the county. He shall sign all warrants drawn upon the treasurer, which shall be countersigned by the president of the board, and the same shall state therein the particular fund or appropriation to which the same is chargeable. No money shall be paid out of the county treasury except upon such warrants so drawn, nor shall any warrant be issued except against an appropriation theretofore made by the county board in accordance with § 61 of this Act. The president of the board of commissioners, the county clerk as comptroller, the treasurer, and the finance committee, shall meet in the month of December to compare and revise all statements made by the comptroller, treasurer and the other accounting officers and committees, and the comptroller shall embody the result of such action in his report to the board of commissioners. The fiscal year of said County of Cook shall commence on the first Monday of December and end on the Sunday preceding the first Monday of December of each year, so long as the law requires the board of commissioners to be elected in the month of November: *Provided, however,* That if at the time this amendatory Act takes effect there is in force, or may thereafter be in force, a

law requiring or authorizing said commissioners to be elected in the month of April instead of November, then, and in that case, the fiscal year of said County shall begin on the first day of June in each year and end on the thirty-first day of May next thereafter, and, also, in that event, the regular meetings of said board of commissioners shall be held on the first Mondays of May, June, July, August, September and February, instead of the months specified for such meetings in the preceding § 61, and corresponding changes shall be made in the other dates or months specified in said § 61, as well as in the provisions of this section preceding this proviso, thus: January shall be changed to June, February to July, and December to May, and all Acts or things so required to be done or performed, or begin or terminate, in said month of January, February, and December, respectively, shall be done and performed, or begin or terminate in the month of June, July and May, respectively. (As amended by Act approved June 14, 1887, in force July 1, 1887.) [As amended by Act approved April 24, 1899. In force July 1, 1899. Laws 1899, p. 125.]

69. Office of auditor created—Uniform system of books of account in county offices—Reports—Access to books—Assistance.] § 62a. That in the county of Cook there is hereby created the office of auditor who shall be appointed by the president of the county board by and with the advice and consent of said board, and whose compensation and official bond shall be fixed by said board; and there shall be formulated, installed and regulated by and under the direction and authority of the said county board a uniform system of books of account, forms, reports and records to be used in the offices of every county officer of Cook county, which said system of books of account, forms, reports and records so formulated under the direction of the said county board and installed and regulated shall be used by said county officers for the purpose of keeping an accurate statement of monies received by them and all the financial and business transactions of their respective offices; and said auditor shall audit or cause to be audited from day to day the receipts of the said several offices and the reports of the said offices of the business transactions of their respective offices and certify to their correctness or incorrectness to the county board. Said auditor shall report monthly to the county board a summarized and classified statement of the official transactions of each of the said offices of each officer of Cook county for each day of said month; and the said auditor shall further make a semi-annual report to the county board containing a recapitulation of the receipts of the several offices for the preceding six months, such

report to include the period covered by the semi-annual report of the several officers of the county of Cook to the county board where a semi-annual report is required by law from said officers.

That for the purpose aforesaid the said county board or any one authorized by it in addition to the power and authority vested in them by sections 51 and 52 of an Act entitled, "An Act concerning fees and salaries and to classify the several counties of the State with reference thereto," approved March 29th, 1872, in force July 1st, 1872, as amended by Act approved March 28th, 1874, in force July 1st, 1874, and all Acts amendatory thereto, are hereby vested with power and authority to enter the office of any county officer of Cook county at all times and to have free and unrestricted access to all the books, papers, forms, reports, accounts and memoranda used by said officers for the transaction of the business of their respective offices for the purpose of auditing, checking or correcting the reports when reports to the county board are required from said offices by law, or compiling the records provided herein to be made to the county board, or auditing the general business of the offices. Said auditor may under the direction of the county board prescribe new forms, reports, accounts or records to be used by said officers in the transaction of the said business of their several respective offices, or change, alter or amend the same from time to time. The said auditor may with the authority of the president of the county board employ assistants, the number and compensation of whom shall be fixed by the county board. [As amended by Act approved May 24, 1907. In force July 1, 1907. Laws 1907, p. 218.

UNITING COUNTIES.

70. Uniting counties—Petition—Notice of election.
71. Designation, etc.
72. Form of ballot.
73. Effect of vote.
74. Canvassing votes.
75. Returns—Proclamation by Governor.
76. Officers to hold until expiration of term.
77. Process, etc.
78. County judges—Disposition of causes.
79. Sheriff of petitioning county.
80. Coroner.
81. County Treasurer.
82. State's Attorney.
83. Superintendent of Schools.
84. County Board.
85. Justices of the Peace and Constables.
86. Death of Officer of Petitioning County.
87. Town officers where counties under Township Organization.

- 88. Legislative and Judicial Apportionment to remain, etc.
- 89. Transfer of causes.
- 90. Debts, Taxes, issuing bonds.

70. Uniting counties—Petition—Notice of election.] § 64. Whenever any number of legal voters, not less than two hundred, one-half of such number being freeholders, residing in any county in this State, shall petition the county board of their own county, for leave to have their own county united and annexed to any adjoining county, and shall also petition the county board of the adjoining county, to which they desire their county to be united and annexed, for leave to have their own county united and annexed to such adjoining county, it shall be the duty of the several county boards, so petitioned, to order that the propositions provided for in this Act shall be submitted to the legal voters of their respective counties, at the next regular election for county or State officers, after receiving such petition, and returns of the votes cast therein shall be made to the Secretary of State, as for county officers. The notices of said election shall contain the name of each of the two counties, and shall state that the proposition to be voted upon will be whether the county of (naming the county whose legal voters have petitioned for union and annexation) shall be united and annexed to the county of (naming the adjoining county to which the legal voters have petitioned to be united and annexed): *Provided*, That such proposition shall not be submitted or voted upon oftener than once in five years. [Sections 64 to 84, inclusive, added by amendment approved May 31, 1879. In force July 1, 1879. Laws 1879, p. 89.]

71. Designation, etc.] § 65. In this Act and all proceedings thereunder, the county whose legal voters shall petition the several county boards as aforesaid, shall be called the “petitioning county,” and the county to which said legal voters shall petition to be united and annexed shall be called the “adjoining county.”

72. Form of ballot.] § 66. The ballots to be used at such election, shall be substantially in the following form, to-wit: For uniting and annexing the county of (naming the petitioning county) to the county of (naming the adjoining county). Against uniting and annexing the county of (naming the petitioning county) to the county of (naming the adjoining county).

73. Effect of vote.] § 67. If a majority of the votes polled in each of such counties at such election shall be in favor of said proposition, all that territory included within the established boundaries of the petitioning county, shall be united and annexed to the adjoining county, and such petitioning county shall cease

to have any separate existence as a county, but shall be merged into and form an integral part of such adjoining county, in fact and in name, at the time and in the manner hereinafter provided.

74. **Canvassing votes.]** § 68. The votes polled at such election shall be canvassed in the manner provided by law for canvassing votes polled for county officers, except that the county clerk of each of said counties, if requested, shall permit two of the legal voters, who petitioned as aforesaid, to be present when the canvass of said vote shall be had.

75. **Returns—Proclamation by governor.]** § 69. Within ten days after such election, the county clerk of each of such counties shall send a correct and duly certified abstract of the votes polled at such election to the Secretary of State; and if a majority of votes polled at such election in each of said counties is found to be in favor of uniting and annexing the petitioning county to the adjoining county, the Secretary of State shall forthwith so notify the Governor of the State, and the Governor shall thereupon, forthwith and without delay, issue his proclamation announcing and declaring the result of such election; and on and after the date of such proclamation the petitioning county shall cease to exist as a county, and all that territory embraced in the limits of such petitioning county shall be united and annexed to, and shall form an integral part of such adjoining county.

76. **Officers to hold until expiration of term.]** § 70. All the county officers of the petitioning county shall continue to hold their respective offices until their respective terms of office shall expire, and shall perform the duties of their respective offices arising in the territory which, before the Governor's proclamation aforesaid, had constituted the petitioning county, and shall receive the fees and compensation thereof, in the manner hereinafter provided. They shall keep their offices at the county seat of the adjoining county, in the court house of said county, in such rooms as may be selected by the county board of the adjoining county; and within ten days after the date of the proclamation as aforesaid, by the Governor, they shall remove all the files and records, books, papers, and furniture of their respective offices to the court house of the adjoining county, which shall thereafter be held and taken to be the files, records, books, papers and furniture of the adjoining county as it shall be constituted after the date of the proclamation aforesaid.

77. **Process, etc.]** § 71. All process of every kind against any person or property within the territory, which had constituted

the petitioning county before the proclamation aforesaid, during the continuance of the term of office of the clerk of the circuit court and the county clerk of the petitioning county, and after the union and annexation, aforesaid, may be issued by the clerk of circuit court or the county clerk of the petitioning county, and they shall respectively, collect and account to the county board of the adjoining county for the proper fees for issuing the same, but all such process shall be signed by the proper clerk and have the proper seal of the proper court of the adjoining county attached. The sheriff of the petitioning county may serve all such process, referred to in this section; and shall collect and account to the county board of the adjoining county for the proper fees for serving the same. The county clerk and the clerk of the circuit court of the petitioning county shall each receive the same compensation he was receiving by law at the date of the aforesaid proclamation, which compensation shall be paid by the county board of the adjoining county out of taxes collected from property in the territory that had constituted the petitioning county before the aforesaid proclamation.

78. **County judges—Disposition of causes.] § 72.** The county judge of the petitioning county, during the continuance of his term of office, and after the union and annexation as aforesaid, shall receive the same annual compensation that he was receiving at the date of the Governor's proclamation aforesaid, which compensation shall be paid by order of the county board of the adjoining county out of taxes collected from property in the territory that had constituted the petitioning county before the aforesaid proclamation. All cases, civil and criminal, and all matters of probate that are on the docket of the county judge of the petitioning county at the date of the governor's proclamation aforesaid, shall be transferred by the county clerk of the adjoining county to the docket of the county judge of the adjoining county; and all cases and matters of probate so transferred may be tried before the county judge of the petitioning county under such arrangement as may be made by and between him and the county judge of the adjoining county. All criminal cases so transferred shall be tried by a jury drawn in the manner provided by law from the qualified jurors residing within the limits of the territory that had constituted the petitioning county before the proclamation aforesaid, unless the defendant in any such criminal case shall consent in open court to be tried by a jury of the adjoining county. The county judge of the petitioning county shall forfeit all right to any compensation if he is not ready and willing to perform the duties he may perform under this Act.

79. **Sheriff of petitioning county.]** § 73. The sheriff of the petitioning county shall continue after the date of the governor's proclamation aforesaid, to perform the duties of sheriff in the territory that had constituted the petitioning county before the aforesaid proclamation, until his term of office shall expire, at which time he shall deliver to the sheriff of the adjoining county, without demand therefor, all books, papers, and furniture pertaining to or connected with his office, and also all moneys and writs held by him as sheriff, and all property attached or levied on by him as sheriff. He shall have a right to collect all taxes collectable by him during his term of office from all property in the territory that had constituted the petitioning county before the aforesaid proclamation. He shall receive the same compensation he would have received as sheriff and *ex officio* collector of the petitioning county, as if the same had not been united and annexed to the adjoining county as aforesaid; but after the date of the governor's proclamation aforesaid all his acts shall be performed in the name of the sheriff of the adjoining county. After the date of the governor's proclamation aforesaid, the sheriff of the petitioning county shall become the deputy of the sheriff of the adjoining county, and the sheriff of the petitioning county may perform all the duties of sheriff, to be performed during his term of office in the territory that had constituted the petitioning county before the proclamation aforesaid without control of the sheriff of the adjoining county, and shall be liable upon his bond as sheriff, and upon his bond as collector, for any breach of the conditions thereof, in the same manner and to the same extent as if the petitioning county had continued to exist as a county. The compensation payable to the sheriff of the petitioning county, shall be paid by order of the county board of the adjoining county, out of taxes upon property in the territory that had constituted the petitioning county before the governor's proclamation aforesaid, and he shall account to the county board of the adjoining county for all fees collected by him: *Provided*, that the sheriff of the petitioning county shall forfeit all right to any compensation, if he is not ready and willing to perform the duties he may perform under this Act.

80. **Coroner.]** § 74. The coroner of the petitioning county shall perform all the duties required of him by law within the territory that had constituted the petitioning county before the proclamation aforesaid, until his term of office shall expire, and shall receive the compensation to which he may be entitled by law, and whatever fees or compensation may be payable by law out of the county treasury, shall be certified and paid by the county board of

the adjoining county to such coroner, out of taxes collected from property in the territory that had constituted the petitioning county.

81. County treasurer.] § 75. The county treasurer of the petitioning county shall perform all the duties required of him by law, in the territory that had constituted the petitioning county, during his term of office. He shall assess the taxable property in the territory aforesaid, and shall return his assessment books to the county clerk of the adjoining county, and make all his reports to the county board of the adjoining county; but he shall be liable upon his bond for any breach or breaches of the conditions thereof, in the same manner and to the same extent as if the petitioning county had not been united and annexed to the adjoining county. The compensation to which he may be entitled by law, shall be paid by the county board of the adjoining county out of taxes collected from property in the territory that had constituted the petitioning county, before the proclamation aforesaid. So much of this section as refers to assessing by the treasurer, shall only be applicable where the petitioning county was not under township organization at the date of the election aforesaid.

82. State's attorney.] § 76. The state's attorney for the petitioning county shall, during his term of office, receive the same compensation he was receiving at the date of the proclamation of the governor, as aforesaid. He shall commence and prosecute all actions, suits, indictments and informations of all kinds, arising in the territory which had constituted the petitioning county before said proclamation, in which the people of the State may be interested, and he shall be assistant county attorney for the adjoining county during his said term of office.

83. Superintendent of schools.] § 77. The county superintendent of schools of the petitioning county shall continue to act as such in the territory that constituted the petitioning county before said proclamation, until his term of office shall expire; at which time he shall deliver to the county superintendent of schools of the adjoining county, without any demand therefor, all moneys, books, papers and personal property, belonging to the office of the county superintendent of the petitioning county, whenever the term of office of the county superintendent of the petitioning county shall have expired, by death, resignation, or lapse of time, all notes and mortgages, and other contracts, payable to, or made in the name of the county superintendent of the petitioning county may be collected, and in any manner enforced, by suit, or otherwise, by and in the name of the county superintendent of the adjoining county. The county superintendent of

the petitioning county shall be subject to the direction and control of the county board of the adjoining county, in the same manner and to the same extent that he would have been subject to the county board of the petitioning county, if the same had continued to have a separate existence as a county.

84. County board.] § 78. The members of the county board of the petitioning county and the county board of the adjoining county, after the date of the governor's proclamation aforesaid, shall sit together at all regular and called meetings, as the county board of the adjoining county as it will be constituted after the proclamation aforesaid. Whenever the term of office of any one of the members of the county board of the petitioning county shall expire, by his death or resignation, or refusal to act, or by lapse of time, the expiration of said term, and the manner thereof shall be entered upon the records of the said county board of the adjoining county, and no successor to him shall be elected, and whenever the term of office of any member of the county board of the adjoining county, elected before the date of the governor's proclamation aforesaid, shall expire in any of the modes hereinbefore mentioned after the date of said proclamation, a successor to him shall be elected in the adjoining county at large as it shall be constituted after the date of the proclamation aforesaid, including the territory that had constituted the petitioning county before said proclamation.

85. Justices of the peace and constables.] § 79. All justices of the peace and constables, duly elected, qualified, and acting within the territory which had constituted the petitioning county before the date of said proclamation of the governor, shall become, on and after the date of said proclamation, justices of the peace and constables of the adjoining county; and all their official acts shall be performed by them as justices of the peace and constables of the adjoining county, and they shall be liable in all respects for non-performances of any duties required by law of them or any of them, as justices of the peace, or constables of the adjoining county. After the date of the governor's proclamation aforesaid, they shall make all applications, returns, and reports, which might have been by law made to the county clerk of the petitioning county before the date of the proclamation aforesaid, to the county clerk of the adjoining county.

86. Death of officer of petitioning county.] § 80. If any county officer of the petitioning county shall die before his term of office shall have expired, after the proclamation aforesaid, no successor to him shall be elected to fill his unexpired term.

87. Town officers where counties under township organization, etc.] § 81. If both the petitioning and adjoining counties are under township organization, the town officers shall not be in any manner affected by the union and annexation aforesaid. If the petitioning county is under township organization, and the adjoining county is not under township organization, the town officers shall continue to act as such until their respective terms of office shall expire; and the members of the county board of the petitioning county shall all sit with, and as a part of the county board of the adjoining county, as hereinbefore provided; and after the term of office of said town officers and said county board of the petitioning county shall expire, the said township organization shall cease to exist. If the adjoining county is under township organization, and the petitioning county is not under township organization, immediately after the proclamation of the governor aforesaid, the territory that had constituted the petitioning county shall be divided into towns, in the manner provided in an act entitled, "An Act to revise the law in relation to township organization," approved March 4, 1874.

88. Legislative and judicial apportionment to remain, etc.] § 82. The territory which constituted the petitioning county shall continue and remain until the next apportionment of the State for congressional, legislative or judicial purposes part of the same congressional district, of the same senatorial district, of the same judicial grand division, of the same judicial appellate district and of the same judicial circuit that it constituted part of at the date of the proclamation aforesaid; and at any election, where the territory that had constituted the respective counties before said proclamation is in different districts, the county clerk of the adjoining county shall keep separate the votes polled in the territory constituting the respective counties before said proclamation, until the next apportionment aforesaid, and shall report and return the same separately to the Secretary of State.

89. Transfer of causes.] § 83. All cases of every kind that are on the docket of the circuit court of the petitioning county at the date of the governor's proclamation aforesaid, shall be transferred by the clerk of the circuit court of the adjoining county to the docket of the circuit court of that county; and all criminal cases so transferred shall be tried by a jury drawn in the manner provided by law from the qualified jurors residing within the limits of the territory that had constituted the petitioning county before the proclamation aforesaid, unless the defendant in any such criminal case shall consent in open court to be tried by a jury of the adjoining county.

90. Debts, taxes, issuing bonds.] § 84. The adjoining county shall not become liable for the debts of the petitioning county. The county board of the adjoining county shall have all the powers which the county board of the petitioning county had at the date of the said proclamation of the governor, to levy taxes upon all the property in the territory which had before the aforesaid proclamation constituted the petitioning county, to pay the debts of the petitioning county. The county board of the adjoining county shall have full power to compromise the debts of the petitioning county; and shall have full power to issue bonds in settlement or compromise of the debts of the petitioning county, which debts may be funded by the adjoining county in bonds issued by that county, setting forth upon their face that the principal and interest of said bonds shall be paid from taxes levied upon the property within the territory which had constituted the petitioning county. And the county board of the adjoining county may submit to the legal voters of the adjoining county, as it will be constituted after the said proclamation of the governor, a proposition to consolidate the debts of the petitioning and adjoining counties; and if a majority of legal voters of said adjoining county, and a majority of the legal voters residing in the territory that had constituted the petitioning county, at any general election shall be in favor of the consolidation of said debts, the same shall be consolidated, and bonds may be issued therefor in the name of the adjoining county. All suits that might have been brought against the petitioning county, may be brought after the proclamation aforesaid against the adjoining county; and any judgment that may be rendered in said suits may be paid by taxation upon the property in the territory that had constituted the petitioning county. In any funding of the consolidated debts of the said petitioning or adjoining county, the bonds issued shall not bear a greater rate of interest than five per cent.

CHANGE OF ORGANIZATION.

AN ACT to authorize counties changing from township organization to county organization to assess a poll tax, road labor and road tax at any meeting of the county commisisoners during the first year after such change. [Approved and in force May 28, 1879. Laws 1879, p. 316.]

91-92. Repealed. See "Roads and Bridges" § 169 ante; Laws 1913, p. 580.

BOUNTY DEBT.

AN ACT to enable any county which has heretofore, in pursuance of law, contracted an indebtedness by issuing and delivering bounty orders to persons who enlisted and were mustered into the military service of the United States, which remains unpaid, to fund the same, by issuing to the lawful holders thereof bonds, payable in such time, not exceeding twenty years, as may be deemed expedient, and bearing a rate of interest not less than six nor more than ten per centum per annum. [Approved April 24, 1873. In force July 1, 1873. Laws 1873, p. 73.]

93. Counties may fund.

94. Bond to refund tax paid.

95. Tax to pay principal and interest.

96. Bonds receivable for taxes.

97. Bonds to show authority.

93. Counties may fund.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That any county which has heretofore, in pursuance of law, contracted an indebtedness, by issuing and delivering bounty orders to persons who enlisted and were mustered into the military service of the United States, which remains unpaid, may, by its corporate authority, fund the same, by issuing to the lawful holders of such indebtedness, whether now in the form of judgments or bounty orders, the bonds of such county for and in lieu thereof, payable in such time not exceeding twenty years, as may be deemed expedient by the corporate authority of such county, and bearing a rate of interest not less than six nor more than ten per centum per annum, payable annually on coupons attached to such bonds.

94. Bond to refund tax paid.] § 2. When a tax has been heretofore levied by any such county for the purpose of paying any such indebtedness, and the same has been only collected in part, and the collection of the residue has been rendered impossible by lapse of time, negligence of officers, writ or writs of injunction, or from any other cause, such county shall, by its corporate authority, issue its bonds to the respective taxpayers, who have made payment on such levy for the amounts respectively paid; which bonds shall be payable and draw interest as provided in Section one of this Act.

95. **Tax to pay principal and interest.]** § 3. The corporate authority of any such county shall annually levy and cause to be collected from the taxable property of such county a sum sufficient to pay the interest accruing on such bonds, and such sum in addition thereto as such corporate authority may deem expedient for the payment of the principal of such bonds.

96. **Bonds receivable for taxes.]** § 4. Said bonds and coupons shall be receivable at their par value in discharge of all taxes that may hereafter be levied by the corporate authority of any such county for their payment.

97. **Bonds to show authority.]** § 5. All bonds so issued by the corporate authority of any such county, shall show on their face that they are issued under the authority of this Act.

REMOVAL OF OBSTRUCTIONS FROM WATER COURSES.

AN ACT authorizing county boards to remove driftwood and other obstructions from water courses. [Approved May 11, 1877. In force July 1, 1877. Laws 1877, p. 68.]

98. Removal of obstructions from water courses.

98. **Removal of obstructions from water courses.]** § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That the county boards of the several counties in this State shall have power to cause the removal of, in such manner as they may direct, the driftwood and other obstructions from the natural water courses in their respective counties.

REMOVAL OF COUNTY SEATS.

AN ACT to provide for the removal of county seats. [Approved March 15, 1872. In force July 1, 1872. Laws 1871-2, p. 309.]
[See Constitution, Art. 10, § 4, p. 69.]

99. Time of holding elections—Judges.

100. Notice—Petition—Affidavit—Traverse of same—Hearing by County Court.

101. Petitioner to designate residence—Must be voter.

102. Petition open to inspection.

103. Contesting petition.

104. Notice of filing petition—Hearing by court—Ordinary election—Subpoenas.

105. Precedence—Decision final—When circuit judge to attend.

106. Appointment of challengers—Their duties—Their votes.

107. Voting.

108. No registration required—Poll books—Canvass—Return.

109. Qualification of voters—Swearing in vote—Penalties.

110. Evidence of voters of county—Contesting election.

111. Canvass of returns.

112. Effect of vote.

113. Neglect of duty—Penalty.

99. **Time of holding elections—Judges.]** § 1. *Be it enacted*

by the people of the State of Illinois, represented in the General Assembly: That all elections for the removal of county seats shall be held on the second Tuesday after the first Monday of November at the usual places of holding elections; and the same persons who were judges and clerks at the next preceding general election, in their respective election precincts, shall act as judges and clerks of such county seat elections; and all vacancies in the respective boards of election shall be filled in the same manner as at general elections.

100. Notice—Petition—Affidavit—Traverse of same—Hearing by county court.] § 2. Public notice shall be given of the intention to circulate a petition praying for an election for the removal of the county seat of any county from its then present location to some other point within said county, and in said petition designated, at least ten days before the same is circulated, by publication in some newspaper printed in said county, and by posting three printed notices in three public places at the county seat, one of which shall be placed on the court house door, and a like number at the place to which the county seat is proposed to be removed, in which notices the intent of such petition shall be set forth; and all signers to such petition procured before such notice is given or procured, six months before the first day of the term of court at which the application is to be made, shall be void, and stricken from such petition; and whenever such petition or petitions, addressed to the county court of such county, and stating the time when such election shall be held, shall be signed by a number of legal voters of said county, at general elections, who are not residents of the city or township (if the county seat is not in a city) in which the county seat is located, equal in number to two-fifths of all the votes cast in said county at the last preceding presidential election therein, and shall be filed in the office of the clerk of the county court of said county, not less than forty nor more than eighty days before the first day of the next September term of the county court in such county, such petition shall be deemed a proposal to remove the county seat of such county, and the point designated in said petition shall be deemed and taken as fixed by said petition, in pursuance of law, whenever the court shall order an election to such point as hereinafter provided, as the point to which it is proposed to remove the county seat of such county. There shall also be filed in the office of said clerk, with said petitions, an affidavit of three legal voters of said county, stating whether or not the point named in the said petition or petitions, to which it is proposed to remove the county seat of such county, is nearer to or further from the

center of such county than the county seat; which affidavit may be traversed by the affidavit of any other three legal voters of said county, within ten days from the filing thereof; and if so traversed the county court shall, at the next September term of said court, after hearing evidence in the case, decide whether or not the point to which it is proposed to remove the county seat is nearer to or further from the center of said county than the county seat.

101. Petitioner to designate residence—Must be Voter.] § 3. Each petitioner signing such petition shall write or cause to be written, opposite to his name on said petition, the name of the city and ward in which he then resides, if he resides in a city, or if he does not reside in a city, then the name of the precinct or township in which he resides at the time of signing such petition; and no person shall sign such petition unless he shall be, at the time, a legal voter in said county at general elections.

102. Petition open to inspection.] § 4. Said petition or petitions shall, after the same are filed in the office of the clerk of the county court, be open to the inspection of any and all citizens of the county, but shall not be removed therefrom.

103. Contesting petition.] § 5. Any citizen and legal voter at general elections in said county may contest the right of any person, whose name is subscribed to said petition, to sign such petition under this Act, and shall also have the right to contest said petition as to any names subscribed thereto that he shall have good reason to believe, and does believe, are fictitious, and no other: *Provided*, he shall, ten days before the first day of the next September term of the county court, file in the office of the clerk of the county court of such county a list of the names of such persons whose right to sign such petition he is desirous of contesting, together with his affidavit, indorsed thereon, that he has good reason to believe, and does verily believe, that such persons named in said list are not legal voters of such county, and had no right in law to sign said petition; and shall also file in the office of said county clerk, ten days before said September term of the county court, a list of such names as he has reason to believe are fictitious, together with his affidavit, indorsed thereon, that he had good reason to believe, and does verily believe, that such names are fictitious; and such persons shall have the right to contest such petitions only as to the names included in said lists.

104. Notice of filing petition—Hearing by court—Ordinary election—Subpoenas.] § 6. Whenever such petition or petitions and affidavit named in Section 2 of this Act shall be filed in the office of the clerk of the county court of such county, it shall be the

duty of the clerk, within ten days from the date of the filing of said petition or petitions and affidavit in his said office, to cause to be published in one or more newspapers published in such county, and if no newspapers shall be published in said county, then in the newspaper published nearest to the county seat of said county, a notice that such petition or petitions and affidavit have been filed in his said office, stating the time when they were so filed, and setting forth therein the substance of such petition or petitions and affidavit, and giving notice that on the first day of the next September term of said court; said court will hear testimony for and against said petitions, as to the list or lists of names on such petition, as may be filed in his office under and in compliance with Section 5 of this Act, and for or against such affidavit if the same has been traversed as provided in Section 2 of this Act. It shall be the duty of said court, on the first day of and during the said September term, to hear all evidence for and against said petition or petitions, as to the list or lists of names, filed in said court under Section 5 of this Act, and to strike from such petition or petitions all such names proven by competent evidence to be fictitious, or the names of persons having no legal right to sign the same under this Act; and in case there shall be but one petition and no contest as to the same or if there shall be a contest as to the same, and said petition shall, after striking therefrom all fictitious and illegal names, still contain the number of names of legal voters required by the second section of this Act, the court shall order said election, according to the prayer of said petition. But in case there shall be two petitions filed in said court, praying for a vote to remove the county seat of such county to different points in said county, each, after striking therefrom all illegal and fictitious names still being signed by two-fifths of the legal voters of the county, as required by Section 2 of this Act, then if a petition praying for a vote to remove the county seat nearer to the geographical center of the county than the point named in the other petition shall be signed by a number of names equal to or greater than one-half of the sum of the names signed to the two petitions, the said court shall order the election for the removal of the county seat to that point nearest to the geographical center of the county, according to the prayer of said petition; but if the other of said two petitions shall be signed by a number of legal voters of said county equal to three-fifths of the sum of the names signed to the two petitions, then the court shall order the election for the removal of the county seat of such county to said last mentioned point, and not otherwise. In case of a contest as to said petition or petitions, as provided for in this Act, it shall be the duty of the clerk of said court, on re-

quest of the person contesting any petition under the provisions of this Act, to issue subpoenas for such witnesses as said person shall name; and it shall be the duty of said clerk, on request of any legal voter of the county, for the purpose of sustaining any petition, in like manner to issue subpoenas for such witnesses as he shall name—said subpoenas to be made returnable to the term of court at which such contest will be made.

105. Precedence—Decision final—When circuit judge to attend.] § 7. All cases of contest arising upon said petitions or affidavit shall have precedence over all other cases at the September term of said court, and shall be heard and determined at said term, and the decision of the county court shall be final. And in case of the sickness or other inability of said county judge to preside, or in case of a vacancy in said office, then it shall be the duty of the circuit judge of the circuit in which said county is located, to attend, hear and determine said contest.

106. Appointment of challengers—Their duties — Their votes.] § 8. Whenever the court shall order any county seat election under the provisions of this Act, the court shall appoint three resident legal voters of the point to which it is proposed to remove the county seat, for each and every voting place in the city, precinct or township in which the county seat is situated, also to appoint three resident legal voters of the county seat for each and every voting place in the city, precinct or township to which it is proposed to remove the county seat, to sit with the regular judges to act as challengers of election at the voting places to which they are respectively assigned, and it shall be their duty to act as such challengers and to challenge any and all persons whom they have good reason to believe are not legal voters at such county seat election, and they shall sit with such judges of election until the close of said election, and during the canvass of the votes at said election. The said challengers, who are thus appointed to act with the regular judges of election, may, if they desire so to do, make an affidavit before any person authorized to administer oaths, setting forth in such affidavit that they have been appointed, as above provided, out of the city, precinct, township or ward where they would otherwise be voters, and that they desire to vote at such county seat election; which affidavit, together with the ballot, shall be sealed up in an envelope and left with one of the judges of election for the precinct, and on the day of election shall be by him presented to the board of election and opened in their presence. The affidavit shall be filed, kept and returned with the ballots for that precinct as other affidavits are, and the ballot shall be numbered and deposited in the ballot

box, and the name entered on the poll books the same as other votes are.

107. Voting.] § 9. The voting at any county seat elections shall be by ballot, and each ballot shall have printed or written thereon the words "For removal," or "Against removal." The polls shall be opened at 8 o'clock A. M., and remain open until 6 o'clock P. M., at which time the polls may be closed, unless a majority of the board shall determine to keep open later. But the polls shall not, in any event, be kept open later than 8 o'clock P. M. of the day of said election.

108. No registration required—Poll books—Canvass—Return.] § 10. No registration of voters shall be made or required for holding any county seat election under this Act. The board of election shall, in each township, precinct, or ward, keep two lists or poll books of the names of the persons whose votes are received; each name shall be numbered, and a corresponding number marked on each ballot before it is placed in the ballot box, which said poll books shall each be certified as correct by the judges and clerks of election. At the close of the polls in each precinct, township or ward, the board of election shall canvass the votes cast at such poll or voting district, and shall make two tally lists, one of which, together with one of the aforesaid poll books, and the ballots cast in such precinct, township or ward, properly strung, and the affidavits made at such election, and certificate of the result of said election made and certified by such board, shall be sealed up together and delivered by one of the board of election, to be selected by the said board at that time, to the county clerk, within four days thereafter. The other poll book and tally list shall be retained by one of the judges of election for that township, precinct or ward.

109. Qualification of voters—Swearing in vote—Penalties.] § 11. No person shall vote at said election who does not possess the qualifications mentioned in the affidavit in this section. Any person offering to vote at any county seat election, whose right to vote shall be challenged by any challenger, member of the board of election, or by any voter of the county, shall answer under oath such questions as may be propounded to him touching his qualifications as a voter, and shall take and subscribe the following oath:

State of Illinois, }
_____ County, } ss.

I do solemnly swear that I am a citizen of the United States, and of this State [*or* I was an elector in this State on the first of April, 1848, *or* obtained a certificate of naturalization before a court of record in this State

prior to the first of January, 1870, and]; that I am above the age of 21 years; that I have resided in this State for one year immediately preceding this election; that I am a *bona fide* resident of this county, and have permanently resided herein for the last six months immediately preceding this election; that I am a legal voter of [here insert the name of the election precinct], and have permanently resided therein for the last ninety days immediately preceding this election and that I have not voted at this election. precinct.]

(Signed)

A. B.

He shall also procure two witnesses, who are at that time legal voters of the township or precinct, who shall take and subscribe the following oath, namely:

State of Illinois, } ss.
 ——— County, }

We, the undersigned, do solemnly swear that we are voters, and legally entitled to vote at this election; that we have known A. B., the person now offering to vote at this election for six months; that he has been a permanent resident of this county for six months last past, and for the ninety days immediately preceding this election has permanently resided in (township or precinct.)

C. D.

E. F.

Which oaths shall be subscribed and sworn before any officer authorized to administer oaths. The board of election shall receive and count the vote of any challenged person who shall present to them, with his vote, the oaths aforesaid. The said oaths shall all be carefully preserved by the board of election, and returned and kept with the poll book, tally list and ballots, as provided by this Act. Any person swearing falsely concerning his right to vote, or concerning the right of another to vote at any such election, or any person who shall cast a fraudulent vote at any such election or who shall vote at such election, not having a right to vote at such election, or who shall cast a vote at such election in any other name than his own, or who shall vote more than once at such election, shall be deemed guilty of a high misdemeanor, shall be liable to be indicted therefor, and shall, on conviction, be punished by confinement in the penitentiary to hard labor for a term of not less than one year, nor more than five years.

110. Evidence of voters of county—Contesting election.]

§ 12. The number of legal votes cast at any county seat election held under this Act shall be deemed and taken for the purposes of such an election as *prima facie* evidence of the number of legal voters of that county at that time entitled to vote on the question; but in case it shall become necessary, in consequence of a contest of an election held under this Act, to ascertain the number of voters of the county entitled to vote upon the question, the court in which the contest may be pending may as-

certain the number of such voters by taking, or causing to be taken, legal evidence, tending to show the actual number of the legal voters of the county entitled to vote upon such question at the time of such election. Courts of equity shall have jurisdiction of all cases of contested election arising under this Act, and may investigate and determine all questions of fraud and fraudulent voting connected therewith, and purge the poll books and returns of all illegal or fraudulent votes; and may investigate and ascertain the total number of legal voters of the county at the time of such election entitled to vote on the question, whether they voted or not, and ascertain and determine whether or not such election was fairly carried by three-fifths or a majority of all the legal voters of the county, as required by the constitution, and make such decree as the circumstances of the case may require. Any of the legal voters and taxpayers of the county who may desire so to do, as well as the town, city or village to or from which it is proposed to remove such county seat, may be made, or on their petition may become parties to such suits, either as complainant or defendant.

111. Canvass of returns.] § 13. On or before the first Tuesday after said election the clerk of the county court shall summon to his aid two justices of the peace, one of whom shall be a resident of the place to which it is proposed to remove the county seat, and the other a resident of the county seat, if such there be, and if there be no justices of the peace resident in those places, then any two justices of the peace of said county, who shall, together with said clerk, open and canvass the votes and returns of said election, made and filed in his office, in the same manner as now provided by law in the case of elections for county officers; the result of which canvass shall, by the clerk of the county court, be spread on the records of the county court in counties not under township organization, and on the records of the board or supervisors in counties under township organization, and also by him be duly certified to the Secretary of State.

112. Effect of vote.] § 14. When the attempt is made by such an election to remove a county seat to a point nearer to the center of such county than the county seat then is, and a majority of the legal voters of said county entitled to vote on the question of removal shall be "for removal," the county seat is thereby removed to the point named in the petition. When the attempt is made by such an election to remove a county seat to a point not nearer to the center than the county seat then is, and three-fifths of the legal voters of such county entitled to vote on the question shall be "for removal," then said county seat of

said county is thereby removed to the point named in the petition.

113. Neglect of duty—Penalty.] § 15. Any member of the board of election, county judge, associate justice, county clerk, sheriff, or any other officers or persons who may be charged with the performance of any duty under this Act, and who shall wilfully fail therein, or shall perform such duty otherwise than is in this Act prescribed, shall be deemed guilty of a misdemeanor, shall be liable to be indicted therefor, and on conviction shall be fined not less than \$500, nor more than \$5,000, or imprisoned in the county jail not less than six months nor more than one year, or both.

COUNTY COURT DEFINED.

AN ACT to define the terms "county court" and "court" as used in an Act entitled "An Act to provide for the removal of county seats," approved March 15, A. D. 1872, and in force July 1, 1872. [Approved May 3, 1873. In force July 1, 1873.]

114. County court defined.

114. County court defined.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That the words "county court" or "court," as they appear in an Act entitled, "An Act to provide for the removal of county seats," approved March 15, A. D., 1872, except in Sections 12 and 13 thereof, shall be deemed, taken and held to mean the county court for the transaction of probate and other judicial business; and the words "county court," as used in Section 13 of said Act, shall be held to mean the county court for the transaction of county business.

SITES FOR COUNTY BUILDINGS.

AN ACT entitled "An Act concerning sites for county buildings." [Approved and in force March 2, 1875. Laws 1875, p. 66.]

115. Purchase of site for court house.

116. When land owned by Board of Education.

117. Condemnation—Damages—To whom paid.

118. Emergency.

115. Purchase of site for court house.] § 1. *Be it enacted by the people of the State of Illinois, represented in the General Assembly:* In all cases where property, sought by the county board of any county in this State to be appropriated for ground whereon to erect a court house or other county building or buildings, or to be used in connection therewith, shall consist of land which has been conveyed by the county to any city, and is owned or held by any city for the use of the inhabitants thereof for a public square, such city may, for such consideration as may be agreed upon between such city and county board, convey such

land to such county in fee, and thereby the entire interest of such city and the inhabitants thereof, in the premises so conveyed, shall be divested out of such city and the inhabitants thereof, and shall become the absolute property of such county, and the consideration therefor shall be paid by such county board to such city, to be used and applied by the city to the purchase or improvement, or both, of a public square or squares, or like public grounds for the use of the inhabitants of such city.

116. **When land owned by board of education.]** § 2. That in all cases where land, being a part of land granted by the United States to any county, for the establishment of a seat of justice, is sought by the county board to be appropriated for any such county purposes as mentioned in the preceding section, and is owned by any board of education for public school purposes, such board of education may, for such consideration as may be agreed upon between such board of education and county board, convey such land to such county, and the consideration shall be paid by the county board to the board of education, and shall become a part of the public school funds thereof.

117. **Condemnation—Damages to whom paid.]** § 3. In all cases where any land held or owned by any city for the use of the inhabitants thereof, for a public square, shall be condemned, under the laws of this State relating to eminent domain, to be used for ground whereon to erect any court house or other county building or buildings, or to be used in connection therewith, the damages assessed therefor shall be paid to such city, to be used and applied for the purchase or improvement, or both, of a public square, or squares, or like public grounds in such city for the use of the inhabitants thereof; and if land so condemned shall be the property of any board of education for public school purposes, the damages assessed therefor shall be paid to such board of education and become a part of the public school fund thereof: *Provided, however,* that none of the provisions of this Act shall apply to counties or cities having more than one hundred thousand inhabitants, or to counties of less than fifty thousand inhabitants: *And, provided, further,* that nothing in this Act, contained shall in any wise operate to affect or repeal an Act entitled, "An Act to create and organize the counties therein named," approved January 15, 1831; or authorize a change of site or location of the public buildings as fixed or located by or under the last named Act.

118. **Emergency.]** § 4. Whereas the court house of Adams county has been recently destroyed by fire, and it is necessary that the county board of said county shall proceed without de-

lay to procure a proper site for the erection of a new court house; and whereas the provisions of this Act are necessary to enable said county board to act to the best advantage in selecting and procuring a site for said new court house, whereby an emergency exists that this Act shall take effect without delay; therefore this Act shall take effect and be in force from and after its passage.

BOARDS OF HEALTH IN COUNTIES.

AN ACT to create and establish boards of health in counties not under township organization, and in townships in counties under township organizations outside of the corporate limits of incorporated cities and villages, to prescribe their duties and powers and provide for enforcing the same. [Approved May 10, 1901. In force July 1, 1901. Laws 1901, p. 91.]

- 119. How created—Powers and duties.
- 120. Powers of.
- 121. Refusal to obey rule of—Penalty.
- 122. Record to be kept.
- 123. Compensation of members of board.
- 124. Repeal.

119. **How created—Powers and duties.]** § 1. The board of county commissioners in counties not under township organization, and the supervisor, assessor and town clerk of every town in counties under township organization, shall constitute a board of health, and on the breaking out of any dangerously communicable diseases in their county or town, or in the immediate vicinity thereof, it shall be their duty to make and enforce such rules and regulations tending to check the spread of the disease within the limits of such county or town as may be necessary; and for this purpose they shall have power to quarantine any house or houses or place where any infected person may be, and cause notices of warning to be put thereon, and to require the disinfection of the house or place: *Provided*, that nothing in this Act shall apply to any territory lying within the corporate limits of any incorporated city or village; *Provided, further*, that in case the board of health in any county not under township organization, or of any township in counties under township organization shall fail, refuse or neglect to promptly take the necessary measures to preserve the public health, or in case any such board of health shall refuse or neglect to carry out the rules and regulations of the State Board of Health, that thereupon the State Board of Health may discharge such duties and collect from the county or township, as the case may be, the reasonable costs, charges and expenses incurred thereby. [As amended by Act approved May 16, 1903. In force July 1, 1903. Laws 1903, p. 136.]

120. **Powers of.]** § 2. The said Boards of Health shall have the following powers:

First—To do all Acts, make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease.

Second—To appoint physicians as health officers and prescribe their duties.

Third—To incur the expenses necessary for the performance of the duties and powers enjoined upon the board.

Fourth—To provide gratuitous vaccination and disinfection.

Fifth—To require reports of dangerously communicable diseases. [As amended by Act approved May 16, 1903. In force July 1, 1903. Laws 1903, p. 136.]

121. Refusal to obey rule of—Penalty.] § 3. Any person who shall violate or refuse to obey, any rule or regulation of the said board of health, shall be liable to a fine not exceeding \$200 for each offense, or imprisonment in the county jail not to exceed six months, or both, in the discretion of the court.

All fines collected under the provisions of this Act shall be paid into the county treasury of the county in which the suit is brought, to be used for county purposes, and it shall be the duty of the state's attorney in the respective counties to prosecute all persons violating, or refusing to obey, the rules of said local boards of health.

122. Record to be kept.] § 4. The clerk of the board of county commissioners, or the town clerk, as the case may be, shall keep a full record of all the doings of said board and report the same to the annual meeting of such board of county commissioners, or town board.

123. Compensation of members of board.] § 5. The members of said boards of health shall be allowed for the time spent in the performance of their said duties, each the sum of \$1.50 per day, which together with all bills by them contracted and all sums of money by them expended, shall be audited and paid in the same manner as other county and town expenses. [As amended by Act approved May 16, 1903. In force July 1, 1903. Laws 1903, p. 137.]

124. Repeal.] § 6. Sections one (1), two (2), and three (3) of Article XIV, of an Act entitled, "An Act to revise the law in relation to township organization," approved and in force March 4, 1874, and all Acts or parts of Acts conflicting herewith are hereby repealed.

ENABLING COUNTY BOARDS TO ISSUE BONDS FOR PURPOSE
OF PAYING OUTSTANDING INDEBTEDNESS.

AN ACT to enable county boards to issue the bonds of their respective counties for the purpose of paying outstanding indebtedness of such counties and to provide for the submission of the question of issuing such bonds to a vote of the voters of such counties. [In force July 1, 1905. Laws 1905, p. 132.]

- 125. Outstanding claim against county, excess, etc.—Question of issuing bonds submitted.
- 126. When special election held—Notice.
- 127. Notices to be posted.
- 128. Special elections conducted by whom.
- 129. Form of vote.
- 130. Bonds, how signed and countersigned.
- 131. Bonds, when payable—Interest.
- 132. Sale of bonds—Notice—Publication.
- 133. Money from sale of bonds separate fund.
- 134. Interest, how to be paid—Sinking fund for payment of principal.

125. Outstanding claim against county excess, etc.—Question of issuing bonds submitted.] 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That when any county shall have audited and allowed claims for county expenses or county purposes which are outstanding and which when added to the sum levied for county purposes exceed the sum of seventy-five cents on the one hundred dollars valuation of property, the county board may, by an order entered of record setting forth substantially the amount of such outstanding claims provide for the submission of the question of issuing the bonds of the county for such sum as may be reasonably necessary for the purpose, to a vote of the people of the county at the next election of county officers after the passage of such resolution or at a special election called by said county board for that purpose.

126. When special election held—Notice.] § 2. When a special election is called for the purpose mentioned in the foregoing section the county board shall fix the date for holding the same and at least twenty days previous to such date the county clerk, in counties not under township organization, shall make out and deliver to the sheriff of his county, or in counties under township organization, to the several supervisors of his county three notices thereof for each precinct or district in which the election in such county is to be held. The notice may be substantially as follows:

NOTICE is hereby given that on [give the date], at [give the place of holding the election and the name of the precinct or district], in the county of [give the name of the county], a special election will be held for the purpose of voting upon the question of issuing the bonds of said county for the purposes mentioned in an order of the county board of said county made

and entered of record on the —— day of ——, A. D. 19— [*give the date of the order*], which election will be opened at eight o'clock in the forenoon of that day.

127. Notices to be posted.] § 3. The said sheriff or supervisor to whom the notices are delivered shall post up in three of the most public places in each precinct or district, the three notices therefor at least fifteen days before the time of holding such special election.

128. Special elections conducted by whom.] § 4. All special elections held under this Act shall be conducted by the same judges and clerks who presided at the next preceding election for county officers in said county, and the said election shall be conducted and returns thereof shall be made and canvassed as nearly as may be in the manner provided by law for the holding of general elections for county officers except that no registration of voters shall be made or required.

129. Form of vote.] § 5. The votes in favor of the proposition to issue bonds, at either a general or special election shall be "For issuing bonds," and those against shall be "Against issuing bonds," and if a majority of the votes cast upon the question are "For issuing bonds," then the county board shall have power to cause to be issued bonds of said county in accordance with the terms of the order in the first section of this Act mentioned.

130. Bonds, how signed and countersigned.] § 6. The bonds issued under the authority of this Act shall be signed in the name of the county by the chairman of the board of county commissioners in counties not under township organization, and by the chairman of the board of supervisors in counties under township organization, and shall be countersigned by the county clerk and shall have the seal of the county attached thereto.

131. Bonds, when payable—Interest.] § 7. The bonds issued by authority of this Act shall be payable at such time or times as the county board may in said order determine not exceeding however twenty years from the date of issue and shall bear interest at such rate per annum as shall by said order be fixed not exceeding five per cent.

132. Sale of bonds—Notice—Publication.] § 8. The said bonds or such as may be necessary shall be sold to the highest bidder under the direction of the county board by receiving sealed bids therefor, but no bond shall be sold for less than par and accrued interest and at least fifteen days' notice of the time and place of receiving bids for such bonds shall be given by the county clerk by publication thereof for at least two successive weeks in some newspaper of general circulation in said county.

133. **Money for sale of bonds separate fund.]** § 9. The money realized from the sale of said bonds, or any of them, shall be kept as a separate fund and disbursed only for the purpose for which they were issued: *Provided*, that any surplus that may remain after the payment of all demands against said funds may be used for other county purposes.

134. **Interest, how to be paid—Sinking fund for payment of principal.]** § 10. The county board of each county issuing bonds under the provisions of this Act shall include in the amounts of all taxes to be raised for county purposes in each year a sum sufficient to pay the accruing interest on such bonds and also a sufficient sum to be set apart as a sinking fund to be accumulated and used for the payment of the principal of said bonds at their maturity.

LEGALIZING COUNTY BONDS VOTED FOR COUNTY BUILDINGS.

AN ACT to legalize county bonds voted for county buildings. [Approved June 1, 1908. In force July 1, 1908.]

135. Legalizing county bonds voted for county buildings.

135. **Legalizing county bonds voted for county buildings.]** § 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly:* That in all cases where counties have voted bonds for the construction of county buildings the acts of said counties in so voting shall be and the same are hereby made legal and binding, notwithstanding any informality in the time or manner of holding the election for such purpose.

BURIAL OF INDIGENT OR FRIENDLESS UNION SOLDIERS OR MARINES, ETC.

AN ACT to provide for the burial of deceased indigent or friendless soldiers, sailors or marines of the late Civil war, the Spanish-American war, the Philippine insurrection and the Boxer uprising in China, or their mothers, wives or widows. [Approved May 24, 1907. In force July 1, 1907. Laws 1907, p. 78.]

136. Appointment of person—Interment.

137. Expenses—Burial—Funeral.

138. County to pay expenses.

139. Repeal.

136. **Appointment of person—Interment.]** § 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly:* That it shall be the duty of the board of supervisors in counties under township organization, and of the county commissioners in counties not under township organization, to designate some suitable person or persons who shall serve without compensation, whose duty it shall be to cause to be properly interred the body of any honorably discharged soldier, sailor or marine, who served in the army or navy of the United States during the late civil war, the Spanish-American war, the

Philippine insurrection, or the Boxer uprising in China, or their mothers, wives or widows who may hereafter die in such county, without having sufficient means to defray the funeral expenses.

137. **Expense—Burial—Funeral.]** § 2. The expense of such burial shall not exceed the sum of fifty dollars, such burial shall not be made in any cemetery or burial ground used exclusively for the burial of the pauper dead, or in that portion of any burial ground so used: *And, provided*, that in case relatives of the deceased, who are unable to bear the expense of burial, desire to conduct the funeral, they may be allowed to do so, and the expense thereof shall be paid as hereinafter provided. [As amended by Act approved June 8, 1909. In force July 1, 1909. Laws 1909, p. 123.]

138. **County to pay expenses.]** § 3. The expenses of such burial and headstones shall be paid by the county in which such soldier, sailor or marine, or their mothers, wives or widows, resided at the time of his or her death; and the board of supervisors in such counties under township organization, or county commissioners in such counties not under township organization, is authorized and directed to audit the account, and pay the said expenses in a similar manner as other accounts against such county are audited and paid: *Provided*, that nothing in this Act contained shall apply to the burial of soldiers and sailors who are inmates of the Soldiers' and Sailors' Home at the time of their death.

139. **Repeal.]** § 4. An Act entitled, "An Act to provide for the burial of deceased indigent or friendless union soldiers, sailors or marines of the late war," approved June 16, 1891, in force July 1, 1891, is hereby repealed.

MAY ERECT MONUMENTS OR MEMORIAL BUILDINGS IN HONOR OF THE SOLDIERS AND SAILORS.

AN ACT to authorize counties to erect monuments or memorial buildings in honor of their soldiers and sailors. [Approved April 22, 1899. In force July 1, 1899. Laws 1899, p. 124.]

140. How propositions submitted to vote of people.

140. **How propositions submitted to vote of people.]** § 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly:* That upon the petition of two hundred or more legal voters of a county being filed with the county clerk thirty days prior to any county election praying that the proposition of erecting or completing a monument or memorial building in honor of its soldiers and sailors at the county seat be submitted to a vote of the people of such county, such proposition shall be submitted to a vote of the people of such county at the next ensuing county election.

Such proposition shall be clearly indicated upon the ballot, and two spaces left upon the margin, one for votes favoring the

proposition, to be indicated by the word “yes,” and one for votes opposing the proposition, to be indicated by the word “no,” as in the form herein given.

Proposition for the erection of a monument or memorial building in honor of the soldiers and sailors of the county.	Yes	X
	No	

The elector shall designate his vote by a cross mark, thus (X), and no ballot which has not a cross opposite the word “yes” or “no” shall be counted either for or against the proposition.

If a majority of all the votes cast upon such proposition are in favor thereof, it shall be the duty of the county board of such county to within one year after such election appropriate sufficient funds to erect a suitable monument or a suitable memorial building and purchase a site therefor, if necessary, at the county seat, in honor of its soldiers and sailors.

If a memorial building shall be erected, the same shall be under the supervision and control of the county board, and it shall be lawful for the county board to permit such use of the building as it deems advisable.

CLASSIFICATION OF COUNTIES.

AN ACT to amend Section 13, and to classify the several counties in this State with reference to Fees and Salaries Act of March 29, 1872. [As amended by Act approved May 11, 1901. In force July 1, 1901. Laws 1901, p. 208.

141. Counties classified.

141. **Counties classified.] § 13.** That for the purpose of fixing the fees and compensation of county and township officers in this State, the several counties therein are hereby divided into three classes, according to population, as ascertained by the Federal Census of the year 1900, which classes shall be known as the first, second and third, as follows:

Counties containing a population of not exceeding twenty-five thousand inhabitants, to-wit: Alexander, Bond, Boone, Brown, Calhoun, Carroll, Cass, Clark, Clay, Clinton, Crawford, Cumberland, DeWitt, Douglas, Edwards, Effingham, Ford, Franklin, Gallatin, Greene, Grundy, Hamilton, Hardin, Henderson, Jasper, Jersey, Johnson, Kendall, Lawrence, Marshall, Mason, Massac, Menard, Mercer, Monroe, Moultrie, Perry, Piatt, Pope, Pulaski, Putnam, Richland, Saline, Schuyler, Scott, Stark, Union, Wabash, Warren, Washington, Wayne and Woodford, shall belong to, and be known as, counties of the first class.

Counties containing a population over twenty-five thousand and not exceeding one hundred thousand, to-wit: Adams, Bureau,

Champaign, Christian, Coles, DeKalb, DuPage, Edgar, Fayette, Fulton, Hancock, Henry, Iroquois, Jackson, Jefferson, Jo Daviess, Kane, Kankakee, Knox, Lake, La Salle, Lee, Livingston, Logan, Macon, Macoupin, Madison, Marion, McDonough, McLean, McHenry, Montgomery, Morgan, Ogle, Peoria, Pike, Randolph, Rock Island, Sangamon, Shelby, St. Clair, Stephenson, Tazewell, Vermillion, White, Whiteside, Will, Williamson and Winnebago, shall belong to, and be known as, counties of the second class.

Counties containing a population exceeding one hundred thousand, to-wit: The County of Cook shall belong to, and be known as, counties of the third class.

The fees and compensation of the several officers hereinafter named, shall be as provided by law in the respective classes of the counties to which they belong.

RELIEF OF THE BLIND.

AN ACT for the relief of the blind. [Approved May 11, 1903. In force July 1, 1903. Laws 1903, p. 138.]

141a. County may contribute from charity fund toward support of blind person.

142. What persons may receive aid—Discretion of county commissioners.

143. Who not entitled to receive aid under this Act.

144. Official "examiner of the blind" to be appointed.

145. Duty of examiner—Registration of applicants—Fees.

146. Affidavit of applicant for benefit—Duty of county clerk.

147. Registry and yearly certification by county clerk.

148. Duty of supervisor of county commissioners to provide for payment.

149. Penalty for false affidavit.

141a. County may contribute from charity fund toward support of blind person.] § 1. *Be it enacted by the People of the State of Illinois represented in the General Assembly:* That it shall be lawful for any county to contribute such sum or sums of money from the charity or general funds toward the support of any blind person who may come under the provisions of this Act.

142. What persons may receive aid—Discretion of county commissioners.] § 2. That all male persons over the age of twenty-one (21) years, and all female persons over the age of eighteen (18) years, who are declared to be blind in the manner hereinafter set forth, and who come within the provisions of this Act, shall at the discretion of the board of county commissioners or the board of supervisors, receive as a benefit one hundred and fifty dollars (\$150) per annum, payable quarterly, upon warrants properly drawn upon the treasurer of the county of which such persons are residents.

143. Who not entitled to receive aid under this Act.] § 3. That no person or persons who are charges of any charitable

institution of this State or any county or city thereof, or persons having an income of more than two hundred and fifty dollars (\$250) per annum, or persons who have not resided within the State of Illinois continuously for ten (10) consecutive years and in their respective counties three (3) years, immediately before applying for said benefits, shall be entitled to the provisions of this Act.

144. Official "examiner of the blind" to be appointed.] § 4. It is hereby made the duty of the board of county commissioners or board of supervisors in each county in this State, to appoint a regular practicing physician, whose official title shall be "Examiner of the Blind," who shall keep an office open in some convenient place during the first week of each year for the examining of applicants for said benefit.

145. Duty of examiner—Registration of applicants—Fees.] § 5. It is hereby made the duty of the examiner of the blind to examine all applicants for benefit, referred to him by the board of county commissioners or board of supervisors, and to endorse on the application a certificate to each applicant, showing whether he or she is blind or not. Said examiner shall keep a register in which he shall enter the facts contained in each certificate. He shall be paid from the county treasury for his services the sum of two dollars (\$2.00) for each applicant so examined.

146. Affidavit of applicant for benefit—Duty of county clerk.] § 6. All persons claiming the benefit provided herein may go before the county clerk of their respective counties, and make affidavit to the facts which bring him or her within the provisions of this Act, which shall be deemed an application for said benefit; two citizens, residents of the county, shall be required to make affidavits to the fact that they have known said applicant to be a resident of the county for three years immediately preceding the filing of said application; the county clerk shall bring the same to the attention of the county commissioners or county supervisors of the county, who shall refer the application to the examiner of the blind for said county.

147. Registry and yearly certification by county clerk.] § 7. The county clerk shall register the name, address and number of applicant, and date of the examination of each of the applicants who has been so determined to be entitled to said benefit, and each year, or on or before the fifteenth (15th) day of January, he shall certify to the county commissioners or county supervisors of the county the names and residences of each applicant.

148. Duty of supervisor or county commissioners to provide for payment.] § 8. It is hereby made the duty of the board of county commissioners or board of supervisors of each county

this State to provide in the annual appropriation for the payment of persons so entitled to said benefit, who have complied with the provisions of this Act, and to cause warrants on the county treasurer to be drawn, properly endorsed, payable to each of said persons in said county each quarter in each year thereafter, during the life of said persons, while they are residents of said county or until said disability is removed.

149. Penalty for false affidavit.] § 9. Any person who shall make a false affidavit in order to secure the benefit herein provided, shall, upon conviction, be deemed guilty of perjury.

COUNTY BOARDS—EMPLOYMENT OF STENOGRAPHERS.

AN ACT authorizing and empowering county boards to employ and pay a stenographer, and to legalize and make valid the acts of county boards heretofore done in employing and paying stenographers. [Approved May 25, 1911. In force July 1, 1911. Laws 1911, p. 243.]

150. Authorizes county boards to employ and pay stenographers.

151. Acts legalized.

150. Authorizes county boards to employ and pay stenographers.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That the county boards of the several counties of this State shall have power to employ and pay a stenographer.

151. Acts legalized.] § 2. That all Acts heretofore done by county boards in employing and paying stenographers are hereby legalized and made valid, anything in any law of this State to the contrary notwithstanding.

COUNTY BOARDS—FUNDS FOR COUNTY FAIR EXHIBITS.

AN ACT to empower the board of supervisors in counties under township organization or the board of county commissioners in counties not under township organization, to appropriate funds for educational or agricultural exhibits at county fairs. [Approved May 25, 1911. In force July 1, 1911. Laws 1911, p. 243.]

152. Authorizes appropriation of funds for certain exhibits at county fair.

152. Authorizes appropriation of funds for certain exhibits at county fair.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That the board of supervisors in counties under township organization or the board of county commissioners in counties not under township organization,

shall have power to appropriate funds to be used for educational or agricultural exhibits at the county fair held annually in their county: *Provided, however*, that the amount so appropriated shall not exceed, in any one year, the sum of three hundred dollars.

COUNTY AUDITOR IN CERTAIN COUNTIES.

AN ACT to create the office of county auditor in counties under township organization of over seventy-five thousand (75,000) inhabitants and under three hundred thousand (300,000), to provide for his nomination, election, term of office, salary and to define his duties. [Approved June 10, 1911. In force July 1, 1911. Laws 1911, p. 242.]

- 153. County auditor—term—nomination—election—qualification—oath—vacancy.
- 154. Compensation—office room.
- 155. Duties.
- 156. Repeal.

153. County auditor — Term — Nomination — Election — Qualification—Oath—Vacancy.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That in all counties under township organization, containing less than three hundred thousand (300,000) and over seventy-five thousand (75,000) inhabitants by the last federal census, there is hereby created the office of county auditor, whose term of office shall be four (4) years and until his successor is elected and qualified. The nomination and election shall be subject to the general election laws of the State, and he shall be elected each four years, beginning with the November election of 1912, and shall take office the first Monday of the following December. His qualifications and oath of office shall be the same as apply to other county officers. In case of a vacancy in the office of county auditor caused by death, resignation or removal from office, the vacancy shall be filled as provided for filling vacancies of other county officers.

154. Compensation—Office room.] § 2. The compensation, office room and furnishings of the county auditor shall be determined and fixed by the county board as in manner provided for other county officers, and shall be paid out of the county treasury, by order of the county board.

155.—Duties.] § 3. The duties of the county auditor shall be as follows:

(a) To audit all claims against the county of whatsoever character, and recommend to the county board the payment or rejection of all bills presented.

(b) It shall also be the duty of said auditor to collect and preserve statistical information with respect to cost of maintenance of the various institutions of the counties to which this Act applies, such as county farms, county jails, workhouses and court houses, or any other institution maintained at county expense.

(c) It shall be the duty of the auditor to approve all orders for supplies issued by the various county officers, before the orders are to be placed with the parties to whom the same are to be given.

(d) It shall be the duty to keep a record of all contracts entered into by the county board and all authorized county officers, for or on behalf of the county.

(e) It shall be the duty of the county auditor to report quarterly to the county board all fees and emoluments due the county from the various county officers as earned, collected or received under performance to their duties.

156.—Repeal.] § 4. (f) All Acts or parts of Acts in conflict herewith are hereby repealed.

COUNTY BOARDS—FUNDS FOR FARMERS' INSTITUTES.

AN ACT to enable county boards of supervisors in counties under township organization and county commissioners in counties not under township organization, to appropriate county funds for use of county farmers' institutes. [Approved June 5, 1911. In force July 1, 1911. Laws 1911, p. 244.]

157. Appropriations for county farmers' institutes—limitation.

157. Appropriations for county farmers' institutes—Limitation.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That it shall be lawful for county boards of supervisors in counties under township organization, and for county commissioners in counties not under township organization, to appropriate funds from the county treasury for use of county farmers' institutes in their efforts to promote the adoption of the latest approved methods of crop production, the improvement of live stock, the conservation of soil fertility, and the improvement of agricultural conditions generally: *Provided*, that in no case shall it be lawful for a county board to appropriate more than three hundred dollars (\$300.00) in any one year for the above purposes.

COURT HOUSES—LEASE OF SPACE.

AN ACT entitled, "An Act to authorize boards of county commissioners or boards of supervisors, as the case may be, to lease space in court houses (not needed for county purposes) to the State or any court thereof, to cities, villages, towns, sanitary districts or other municipal corporations." [Approved and in force May 27, 1911. Laws 1911, p. 244.]

158. Authorizes lease of space in court houses.

159. Emergency.

158. Authorizes lease of space in court houses.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That whenever it shall appear to any board of county commissioners or board of supervisors that there is space in the court house of the county governed by such board of county commissioners, or board of supervisors, not needed for county purposes, it shall be lawful for such board of county commissioners or board of supervisors, as the case may be, to lease any such space to the State or any court thereof, to any city, village, town, sanitary district or other municipal corporation for such period of time and upon such terms as may seem just and equitable to such board of county commissioners or board of supervisors, as the case may be.

159. Emergency.] § 2. Whereas, An emergency exists, this Act shall take effect from and after its passage.

APPROPRIATIONS FOR SOIL AND CROP IMPROVEMENT
ASSOCIATIONS.

AN ACT to enable the county boards to appropriate funds for the use of soil and crop improvement association [s] of their several counties. [Approved June 27, 1913. In force July 1, 1913. Laws 1913, p. 202.]

160. County boards empowered to appropriate funds for improvement of general agricultural conditions—Limitation.

161. Report to county board.

160. County boards empowered to appropriate funds for improvement of general agricultural conditions—Limitation.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That the county boards of the several counties of this State are hereby authorized and empowered to appropriate for the use of county soil and crop improvement associations, or any other like association organized for the improvement of general agricultural conditions, a sum not to exceed five thousand dollars (\$5,000.00) per annum, which is hereby declared to be for county purposes, and to be paid to the treasurer of such association as soon as the annual taxes shall have been collected in like manner as all other expenditures are authorized and expended by said boards.

161. Report to county board.] § 2. And it shall be the duty of the treasurer of such association receiving said money to prepare at least annually a complete and detailed statement or report of the manner in which said money shall have been expended, which said statement shall be signed by the president of said association, attested by its secretary, and sealed with its seal, if it have one, and file said report with the said county board.

COUNTY CLERKS.

AN ACT to revise the law in relation to county clerks. [Approved March 24, 1874. In force July 1, 1874. Revised Stat., chap. 35.]

1. Oath.
2. Bond—Form.
3. Commission.
4. Office at court house, etc.
5. Seal.
6. Deputies.
7. Principal clerk responsible.
8. *Pro tem.* clerk in case of vacancy.
9. Custody of records.
10. General duties:
 - (1.) As clerk of county board.
 - (2.) Record of county orders.
 - (3.) County orders to be countersigned.
 - (4.) Record of official bonds.
 - (5.) Indexes of records in his office.
 - (6.) Copies of records.
 - (7.) Other duties required by law.

1. Oath.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That each county clerk, before entering upon the duties of his office, shall take and subscribe the following oath, which shall be entered at large upon the records of his office:

I do solemnly swear [*or affirm, as the case may be*] that I will support the Constitution of the United States, and the Constitution of the State of Illinois, and that I will faithfully discharge the duties of the office of county clerk of ——— county, according to the best of my ability.

Laws 1849, p. 63, § 8.

2. Bond—Form.] § 2. Each county clerk shall, before entering upon the duties of his office, give bond in such penalty and with such security as the county board shall deem sufficient, which bond shall be substantially in the following form, and shall be recorded at large upon the records of his office, and when so recorded shall be deposited with the clerk of the circuit court for safe keeping:

Know all men by these presents, that we, (A. B.) principal, and (C. D.) and (E. F.) sureties, all of the county of ——— and State of Illinois, are

held and firmly bound to the People of the State of Illinois, in the penal sum of ——— dollars, for the payment of which, well and truly to be made, we bind ourselves, each of us, our heirs, executors and administrators, firmly by these presents. Signed with our hands and sealed with our seals.

Dated at ———, the ——— day of ———, A. D. 19—.

The condition of the above bond is such, that if the above bounden (A. B.) shall perform all the duties which are or may be required by law to be performed by him as county clerk of said county of ———, in the time and manner prescribed or to be prescribed by law, and when he shall be succeeded in office, shall surrender and deliver over to his successor in office all books, papers, moneys and other things belonging to said county, and appertaining to his said office, then the above bond to be void; otherwise to remain in full force.

Signed, sealed and delivered in the presence of (G. H.)

A. B., [SEAL.]
C. D., [SEAL.]
E. F., [SEAL.]

[Laws 1849, p. 63, § 8.

3. Commission.] § 3. County clerks shall be commissioned by the governor.

4. Office at court house.] § 4. The county clerk shall keep his office at the court house of his county, or at such other places as may be provided for him by the authorities of such county at the county seat. [Laws 1849, p. 63, § 8.

5. Seal.] § 5. He shall be keeper of the seal of the county, which shall be used by him in all cases where he is required to use an official seal. [Laws 1849, p. 63, § 5.

6. Deputies.] § 6. He may appoint deputies, who shall take and subscribe the same oath for the discharge of their duties as is required of him, which shall be entered of record in his office. [Laws 1853, p. 257, § 1; Revised Stat. 1845, p. 395, § 6.

7. Principal clerk responsible.] § 7. The principal clerk shall in all cases be responsible for the acts of his deputies. [Revised Stat. 1845, p. 395, § 7.

8. Pro tem clerk in case of vacancy.] § 8. Whenever a vacancy occurs in the office of any county clerk and the unexpired term exceeds one year, the county board of the county shall immediately appoint a clerk *pro tempore*, who shall qualify by giving bond and taking the oath as required of the county clerk, and shall thereupon perform all the duties and be entitled to all the emoluments and be subject to all the penalties appertaining to the office of county clerk until the successor of such clerk is elected or appointed and qualified. [See "Elections," ¶ 138, § 133; Laws 1849, p. 64, § 10.

9. Custody of records.] § 9. The county clerk shall have the care and custody of all the records, books and papers apper-

taining to and filed or deposited in their respective offices, and the same shall be opened to the inspection of all persons without reward. [Laws 1861, p. 238, § 12.]

10. **Gneral duties.]** § 10. The duties of the county clerk shall be—

1st. To act as clerk of the county board of his county and to keep an accurate record of the proceedings of said board, file and preserve all bills of account acted upon by the board, and when any account is allowed or disallowed, he shall note that fact thereon, and when a part of any account is allowed he shall note particularly the items allowed.

2d. To keep a book in which he shall enter the number, date and amount of each order upon the county treasurer, and the name of the person in whose favor the same is drawn, and when such order is cancelled, he shall note the date of cancellation opposite such entry.¹

3d. Before any such order is delivered to the person for whose benefit it is drawn, the county clerk shall present the same to the county treasurer, who shall personally countersign the same.

4th. To keep a book, in which shall be entered in alphabetical order, by name of the principal, a minute of all official bonds filed in his office, giving the name of the office, amount and date of bond, names of sureties and date of filing, with such reference to the number or other designation of the bond, that the same may be easily found.

5th. To keep proper alphabetical indexes of all records and papers in his office.

6th. To give any person requiring the same, and paying the lawful fees therefor, a copy of any record, paper or account in his office.

7th. Such other duties as are or may be required by law.

[Laws 1861, p. 237, § 10; p. 238, § 13. Revised Stat. 1845, p. 136, § 46.]

(1) A county order is properly executed when signed by the clerk and countersigned by the treasurer of the county. No seal of office is required, and the mere fact that such order is issued and delivered in another county will not render it illegal. Board of Supervisors, etc., v. Lawrence, 63 Ill. R., 82.

COUNTY TREASURER.

AN ACT to revise the law in relation to county treasurer. [Approved February 25, 1874. In force July 1, 1874.]

1. Oath.
2. Bond—Form.
3. Commission.
4. Duties of treasurer.
5. Accounts to be kept.
6. Accounts free to inspection.
7. County orders countersigned, etc.—Records.
8. Orders to be filled up and authorized.
9. When money may be paid from treasury.
10. Report of county board.
11. Report to be filed with county clerk—Free to inspection.
12. Account—Settlement.
13. Half-yearly settlements.
14. Examination under oath.
15. Refusal to make settlement, etc.—Defaulter—Misconduct—Removal.
16. Neglect of duty—Penalty.

1. Oath.] § 1. *Be it enacted by the People of the State of Illinois, represented in the General Assembly:* That each county treasurer, before entering upon the duties of his office, shall take and subscribe, and file with the county clerk, the following oath:

I do solemnly swear [*or affirm, as the case may be*] that I will support the Constitution of the United States and the Constitution of the State of Illinois, and that I will faithfully discharge the duties of the office of treasurer of the county of ———, according to the best of my ability.

[Revised Stat. 1845, p. 137, § 2.

2. Bond—Form of.] § 2. Each county treasurer, before he enters upon the duties of his office, shall also execute a bond in such penalty and with such security as the county board shall deem sufficient, which bond shall be in substance in the following form, to-wit:

Know all men by these presents, that we (A. B.), principal, and (C. D. and E. F.), sureties, all of the county of ——— and State of Illinois, are held and firmly bound to the People of the State of Illinois, in the penal sum of ——— dollars, for the payment of which, well and truly to be made, we bind ourselves, each of us, our heirs, executors and administrators, firmly by these presents. Signed with our hands and sealed with our seals.

Dated at ———, the ——— day of ———, A. D. 19—.

The condition of the above bond is such, that if the above bounden (A. B.) shall perform all the duties which are or may be required by law to be performed by him as treasurer of the said county of ———, in the time and manner prescribed or to be prescribed by law, and when he shall be succeeded in office, shall surrender and deliver over to his successor in office all books, papers, moneys and other things belonging to said county, and appertaining to his said office, then the above bond to be void; otherwise to remain in full force.

Signed, sealed and delivered in the presence of (G. H.)

A. B., [SEAL.]
C. D., [SEAL.]
E. F., [SEAL.]

Which bond shall be filed with the county clerk on or before the first Monday of December after such election.¹ [Revised Stat. 1845, p. 137, § 3.

3. Commission.] § 3. The county treasurer shall be commissioned by the governor.

4. Duties of treasurer.] § 4. The county treasurer shall receive and safely keep the revenues and other public moneys of the county, and all money and funds authorized by law to be paid to him, and disburse the same pursuant to law. [Laws 1861, p. 239, § 4.

5. Accounts to be kept.] § 5. Every county treasurer shall keep proper books of account, in which he shall keep a regular, just and true account of all moneys, revenues and funds received by him, stating particularly the kind of funds received, whether in gold, silver, county orders, jury certificates, auditor's warrants or other funds authorized by law to be received as revenue, the time when, of whom, and on what account each particular sum in money or other funds was received; and also of all moneys, revenues and funds paid out by him agreeably to law, stating particularly the time when, to whom, and on what account payment is made. [See "Revenue," ¶ 296, 297, §§ 290, 291; Revised Stat. 1845, p. 138, § 4, 5; Laws 1861, p. 239, § 5.

6. Free to inspection.] § 6. Said books of account shall be free to the inspection of all persons wishing to examine the same. [Revised Stat. 1845, p. 138, § 5.

7. County orders countersigned, etc.—Record.] § 7. When any court order is presented to him to be countersigned, the county treasurer shall personally countersign the same, and shall also enter in a book, to be kept by him for that purpose, its number, date and amount, and the name of the person to whom the same is payable, and when any such order is paid, he shall cancel the same, and note the fact opposite such entry. [Revised Stat. 1845, p. 136, § 46.

8. Orders to be filled up and authorized.] § 8. The county treasurer shall not countersign any county order before the same is filled up, nor until he shall have examined the records of the county board, and ascertained that the issuing of such order is warranted thereby. [Revised Stat. 1845, p. 136, § 47.

9. When money may be paid.] § 9. No money or funds shall be paid out of any county treasury, except in accordance with an order of the county board, or when payment is spe-

(1). *Morley v. Town of Metamora*, 78 I394.

cifically authorized by law to be made. [Revised Stat. 1845, p. 138, § 6.]

10. Report to county board.] § 10. The county treasurer of each county shall report to the county board, at each regular term thereof, the amount of money, county orders, jury certificates and other funds he may have received from every source, since his last accounting, stating by whom, on what account and at what time paid into the treasury; and also the amount of all payments from the treasury, stating particularly to whom, on what account and at what time paid out; also the amount of money, county orders, jury certificates and other funds in his hands. [Revised Stat. 1845, p. 138, § 7.]

11. Report to be filed—Free to inspection.] § 11. Said reports shall be filed and preserved in the office of the county clerk, and be free to the inspection of any person wishing to examine the same. [Revised Stat. 1845, p. 138, § 8.]

12. Account—Settlement.] § 12. The county treasurer shall, at any time when required by the county board, render an account and make settlement with the county. [Laws 1861, p. 240, § 7.]

13. Half-yearly settlements.] § 13. It shall be the duty of the county board, at least once every six months, to examine the books of account of the treasurer, and count the funds, and make settlement with the county treasurer, and the county clerk shall enter on the records of the county board the amount and kinds of funds found to be in the treasury at such time. [Revised Stat. 1845, p. 139, § 11.]

14. Examination under oath.] § 14. The county board of each county shall have power at any time to examine the county treasurer under oath, touching any matter in regard to the faithful discharge of his duty.

15. Refusal to account, etc.—Defaulter—Misconduct—Removal.] § 15. If any county treasurer shall neglect or refuse to render an account, or make settlement at any time when required by law, or by the county board, or refuse to answer any question propounded to him by the county board, or is a defaulter, and in arrears with the county, or is guilty of any other misconduct in his office, the county board may remove him from office, and may appoint some suitable person to perform the duties of treasurer until his successor is elected, or appointed and qualified; or if by reason of the death or resignation of the county treasurer, or other cause, the said office shall become vacant, then the county board may appoint some suitable person to

perform the duties of treasurer, until a county treasurer is elected or appointed and qualified. The person so appointed shall give bond and security, as required by law of the county treasurer. [As amended by Act approved and in force March 9, 1883. Laws 1883, p. 70.]

16. Neglect of duty—Penalty.] § 16. If any treasurer of any county in this State shall neglect or refuse to perform any of the duties required of him by this Act, he shall forfeit a sum of not less than \$50, and not exceeding \$1,000, according to the nature and aggravation of the offense, to be recovered by indictment in the circuit court of the proper county, or by action of debt, by any person who shall sue therefor, one-half to the person suing, and the other half to the proper county. [Revised Stat. 1845, p. 140, § 18.]

GENERAL NOTES.

TOWNS.

The word "town," as found in our statute, is not always used in the same sense. Under the township system, a town is a species of municipal corporation, and constitutes an integral part of a county, and such towns are clearly interwoven in the management of county affairs, and generally embrace a township according to government survey. The word, as used in the Rev. Stat. of 1845, referred to a different kind of incorporation; such an organization was formerly always called an "incorporated town," while in our later statutes they are frequently called "villages" but mean the same thing. *Martin v. The People*, 87 Ill. R., 524.

"A town under the Township law is not an incorporated town within the meaning as generally given by the statutes." *Town of Woo-sung et al. v. People*, 102 Ill., 648, 654.

"An incorporated town within the meaning of the statute regulating the organization of cities and villages, is a village or small collection of residences which has become incorporated for the better regulation of their internal police, etc." *People v. Village of Harvey*, 142 Ill., 573, 576; *Martin v. The People*, 87 Ill., 524.

"'Incorporated Towns' does not refer to towns under the Township Organization law." *Harris v. Schryock*, 82 Ill., 119.

"A town organized under the Township Organization law is but a quasi corporation and not an Incorporated Town, and hence is not within the meaning of the word "town" as used in the Act of 1883, concerning the licensing of dram shops in counties, cities, towns and villages." *People v. The Town of Thornton*, 186 Ill., 162.

The words "town meeting" as used in the Township law refer to the annual meetings of the electors of the town for the transaction of town business. Such meetings are clearly distinguishable from "elections" when there is no other business transacted but to elect officers. *C. & I. R. R. Co. v. Mallory*, 101 Ill. R., 583. Towns at their annual town meetings may provide for the institution and defense of suits in which the town is interested, and a contract between the supervisor and an attorney, for that purpose, in pursuance of a resolution adopted at town meeting, will be enforced. *Town of Mt. Vernon v. Patton*, 94 Ill. R., 65.

The first Constitution of Illinois (A. D. 1818), provided for the organization of counties on the county-court plan of Virginia. The second Constitution (A. D. 1848), ordered that "the General Assembly shall provide, by a general law, for a township organization," etc. In pursuance of this constitutional mandate, "an Act to provide for township organization," was passed and became effective April 1, 1851. In the first four sections (Art. I), the legislature employed the constitutional word "township." In the fifth section, the lawmakers fell into the error of employing the words town and township, as if they were synonymous terms. The third constitution (A. D. 1871), like its predecessor, recognizes the subdivision of counties for purposes of local government by the name townships, not towns, and the legislature (A. D. 1874), passed "an Act to revise the law in relation to township organization," and therein continued the twenty-three-year-old error of employing "township" and "town" as words of the same meaning.

The supreme court has done what it could to correct this persistent legislative error. For instance, the township assembly, or so-called "town-meeting," of Scales' Mound township, Jo Daviess county, passed an ordinance "to enlarge the cemetery of the town of Scales' Mound," by the purchase or condemnation of two acres of adjoining land. The owner of said acres and the township authorities being unable to agree on the price, the latter instituted legal proceedings to acquire the land by condemnation. From the judgment on this procedure the owner carried an appeal to the supreme court, his contention being that the "town" of Scales' Mound had no authority to acquire land for a cemetery, because the statute confers this power on "any city, village or township," but not on any "town." The court, in deciding, said: "The statute relating to cemeteries authorizes a township to acquire land by condemnation. A mere geographical subdivision of land by government survey, not organized in a corporate capacity, can neither begin nor prosecute a condemnation proceeding. Consequently, if the term 'township' as used in the cemeteries Act, confers no authority on one of the component subdivisions of a county, called into being by 'the township organization' law, then the word 'township' in the cemeteries Act is meaningless. We are of opinion that the legislature intended to use the words 'township' and 'town' synonymously in referring to the organized political divisions of a county. The U. S. supreme court (119 U. S. 686), said: 'In New Jersey, Pennsylvania, Ohio, Michigan, Indiana and Illinois, the subdivisions of a county, answering to the 'towns' of New England and New York, are called townships, though the word 'town' is also applied to them in Illinois.'" 195 Ill., 353.

In another case the court said: "The record in this case shows that when the question was submitted to the legal voters of the territory to be incorporated, it was found that all the votes were cast for village organization under the general

law' for the incorporation of villages. It does appear, however, that this village adopted for its municipal name 'The Town of Campbell Hill,' and it may be that in some of the proceedings for organization it was designated as a 'town.' That, however, would not invalidate the proceedings, if the statute was followed. It has been held a number of times that, within the meaning of the law, the terms 'town' and 'village' are synonymous." 87 Ill., 524; 195 Ill., 353; 119 U. S., 686; 197 Ill., 449.

Probably even the average member of an Illinois legislature would not venture to say that the terms "township" and "village" are synonymous. As there is no legislative omnipotence able to make a thing that which it is not, there is no power of a "be it enacted" to make township and town the equivalents of each other. The attempt to perform this impossible in the Illinois township organization Act is a frequent cause of confusion and of occasional litigation, as the cited cases show.

"The proper authorities of townships shall annually, on or before the second Tuesday in August, certify to the county clerk the several amounts which they severally require to be raised by taxation." Revenue law, § 128, § 122.

The proper authority of each of the several townships to make this certificate is vested in the township clerk. "The authority of the county clerk is the certificate of the township clerk, without which any attempt to extend such tax is illegal and void. But, back of such certificate there must be a levy of the tax by the proper authority, for only from such levy can the township clerk obtain the amount to be certified." 141 Ill. 483. This decision is repeated in 201 Ill., 351.

The proper authority to make such levy, for all township "purposes required by law," is vested in the township assembly—excepting, that authority to levy a limited tax for highway purposes is vested by the roads and bridges Act of 1883, in the highways commissioners.

"Under § 119 § 113 of the election law, the election of a township officer can be contested only by an elector of the township, and that the contestant is such elector must be shown in his petition to the court. In a petition to contest an election of a township officer an averment that the petitioner was a resident of the township, and that he had been nominated for the office of highways commissioner, and his name was printed of the voting-paper, are not equivalent to an averment that he was an elector of the township." 172 Ill., 37.

If the petition fulfill the legal requirements, "the case may be heard and determined by the court in term-time, or by the judge in vacation, at any time not less than ten days after service of process, or at any time after the defendant is required by notification to appear, and shall have preference in the order of hearing to all other cases. And the court in term-time, or the judge in vacation, may make and enforce all necessary orders for the preservation and production of the ballots, poll-books, tally-papers, returns, and other papers or evidence that may bear upon the contest." Election law § 121 § 116.

"Townships are corporate bodies and as such are endowed with power, under specified circumstances and for certain purposes, to impose taxes. It is one of the most firmly established rules of law that corporations can exercise no power but such as is delegated to them.

"The third subdivision of the 3d clause, 3d §, Art. IV, of the township organization Act, authorizing electors at a township meeting to raise money by taxation 'for any other purpose required by law,' is not authority for sustaining a tax levied by a vote of the township meeting 'for town purposes,' there being nothing to show the nature of such purposes.

"In order to make valid the adoption by a township meeting of a motion to raise money by taxation under the third subdivision of clause 3d, of § 3, Art. IV, of the township Act, it must appear that the purpose for which the tax was levied was one required or authorized by law to be carried into execution by the township."

"The law "expressly limits the power of the township meeting in respect of its authority to raise money for other purposes than those specified in the first, second and fourth subdivisions of said clause third, to the raising of money by taxation for such other purposes only as the statute requires shall, or may, be performed by the township in its corporate capacity. . . . In order to make legal and effective the action of the township meeting in adopting a motion to raise money by taxation under the third subdivision of said clause of said § 3, this much must always appear: that the purpose for which the money is to be raised is one for which the township has authority to raise money by taxation. It is not sufficient that the township meeting shall have voted on a proposition to raise money by taxation "for township purposes," for the reason that the taxpayer can not be required to contribute to the execution of many purposes which the voters in such meeting may think would best conserve the interests of the inhabitants and the purposes of the corporate existence of the township, but only to such purposes as the law has authorized the township, as a corporate entity, to forward or accomplish. The taxpayer has right to be informed, by the proposition adopted, of the purpose for which the exaction of the tax is ordered. . . . The authority given by the aforesaid subdivision of clause 3d is to raise money "for purposes authorized by law," and the proposition to raise money under this subdivision must so specify the purpose that the court, if the aid of the court be invoked by the taxpayer, may see that the taxes were levied to enable the township to discharge some specified duty, or accomplish some designated purpose, for which the township is invested with authority of law." 194 Ill., 51.

The supervisor and town clerk, neither separately nor conjointly, are the corporate authority of their town. They are simply town officers, with limited duties to perform in respect of town affairs. They have no authority to make corporate subscriptions to railroads or issue bonds, except as they are authorized by the electors of the town. *Williams v. Town of Roberts*, 88 Ill. R., 11. Towns have no power to issue bonds to aid in the building of a railroad unless specially authorized by statute. *Welch v. Post*, 99 Ill. R., 471.

Where town auditors allow claims against a town, and they are certified and presented to the voters at town meeting and approved by them, it will be presumed there was no fraud in allowing the claims, and a tax levied to pay the same will not be enjoined, although some of the claims may have been illegal, if the tax is not in excess of that authorized to be levied and collected. *Town of Lemont v. Singer & Talcott Stone Co.*, 98 Ill. R., 94. The granting of certificates by town auditors for road indebtedness, drawing interest, and afterwards taking them up, adding interest to principal and giving new certificates for the whole amount, drawing interest, is illegal, but it does not prove fraud so as to authorize a court to enjoin a tax levied to pay such certificates. *Town of Lemont v. Singer & Talcott Stone Co.*, 98 Ill. R., 94. A judgment against a town is a town charge, and the board of town auditors should audit and certify the amount necessary to satisfy the same, and if they refuse, they will be compelled to do so by mandamus. *Town of Lyons v. Cooledge*, 89 Ill. R., 529.

DRAINS AND DITCHES.

Section 14 of the Drainage Act, which provides that the commissioners shall assess to each tract of land its proportionate share of the entire cost of the work, does not require that a tract of land shall be divided into the smallest legal subdivisions in making the assessments, but the more reasonable rule is, that two or more tracts disconnected shall not be valued and assessed together. The assessment of a tract of 420 acres, all situated in one section, and in one body, and levying a gross sum upon the whole, was held no ground for defeating judgment on the assessment. A second special assessment by the commissioners of a drainage district is not void merely because the record of their proceedings fails to show for what purpose it was made. A second assessment is allowed where the first one proves inadequate to complete the work proposed, or when necessary for maintenance or repairs. An objection to a second assessment, on the ground that it was not made for a proper purpose, should be made before the commissioners at their meeting to confirm the assessment. In making assessments under the drainage law, it is the duty of the commissioners to determine what property will be benefited by the proposed work, and what will not, and their determination, when called in question for the first time on application for judgment against the land assessed, in the absence of fraud, must be held conclusive. The remedy of one aggrieved by an assessment is to object to confirmation of the assessment, and if relief is denied, to appeal. The sections of Art. IX of the Constitution relating to uniformity in taxation, have no bearing on special assessments. *Moore v. The People*, 106 Ill. R., 376.

"The relations between highway commissioners and adjoining proprietors with reference to drainage are ordinarily the same as between adjacent owners, and if the commissioners, by removing a culvert, cause surface water to flow back upon adjoining premises they are liable in damages to the owner." 172 Ill., 391.

Whenever the proper public authorities either construct a bridge on the line of a public road, or accept a bridge there built by others which is used by the public, the county, township or adjoining townships represented by such authorities must keep such bridge in repair. 158 Ill., 197.

"A drainage district is a public corporation and the attorney-general, or the local State's attorney, may, where rights of the public are involved, file an information in the nature of a quo warranto to test the legality of the organization of the district without regard to the time since its organization." 176 Ill., 310.

"The petition provided for in the drainage Act of 1901 is required to be presented to the township clerk and filed in his office, and it is not sufficient to leave the same in the office of petitioner's attorney until the time the order organizing the district is entered." 200 Ill., 33-4.

"Section 15a of the farm drainage act as amended in 1895, providing that elections shall be held on the second Saturday in March of each year, between the hours of two and six o'clock P. M., applies to drainage districts lying in two townships as well as lying in one township." 196 Ill., 310.

"If a city or village assumes jurisdiction of a creek or ditch within its corporate limits and improves the same for drainage purposes, that portion of the creek or ditch can not be included in another drainage district organized under the Act of 1901. . . . A ditch and its branches, made by special assessment, can not be said to have been voluntarily made, within meaning of the Act of 1901." 200 Ill., 33-4.

"A party voluntarily connecting with a drainage ditch subjects only his own land to be taken into the drainage district. Owners of land adjoining a drainage district do not, by deepening the ditches on their own land so as to connect with the ditches of the district, subject the lands of other parties that drain through such deepened ditches to be taken into the district, as in case of voluntary connection with the ditches under the statute." 191 Ill., 623.

FENCES.

The section of the statute requiring fences to be of a certain height has been held to have reference solely to partition fences between adjoining owners, and to have no application to an outside fence. *Scott v. Wirshing*, 64 Ill. R., 102; *Scott v. Buck*, 85 Ill. R., 334. Evidence that a party, at the request of another, repaired a fence made by the latter as a division fence, and had from time to time put boards upon it to the amount of about half the fence, is competent to be considered by the jury, upon the question whether there was a division fence. *McNally v. O'Brien*, 88 Ill. R., 237.

REVENUE.

Exemptions from taxation are to be strictly construed. *The People v. Seaman's Friend Soc.*, 87 Ill. R., 246. Property belonging to the Federal Government is exempt from State taxation. *The People v. Gale*, 93 Ill. R., 127. Swamp land, so long as it belongs to the county, is not subject to taxation, and a purchaser of such land at a tax sale acquires no title. *County of Piatt v. Goodell*, 97 Ill. R., 84. Land belonging to an institution of learning, but which is not used exclusively for the interests of the institution, is not exempt from taxation. *Pres. Theological Seminary v. The People*, 101 Ill. R., 578. Institutions of purely public charity whose property is exempted from taxation must be corporations, and it may well be doubted if the statute intended to embrace more than such institutions as are founded and maintained by the State. *The People v. Seaman's Friend Soc.*, 87 Ill. R., 246. Where the property of a corporation is by charter exempted from taxation, the exemption amounts to a legislative contract, binding on the State, and the property cannot afterwards be subjected to taxation. *The People v. Soldiers' Home*, 95 Ill. R., 561. The county board has jurisdiction to give relief against an assessment of property for taxation which is exempt. *Preston v. Johnson*, 104 Ill. R., 625.

All personal property should be assessed at its fair cash value, and all real estate at a price it would bring at a fair voluntary sale. *Law v. The People*, 87 Ill. R., 385. Capital stock, within the meaning of the revenue law, is intended to designate the property of the corporation subject to taxation, not in separate parcels, but as an homogeneous unit, partaking of the nature of personalty, and subject to the burdens imposed upon it at the domicile of the owner, which is where it exercises corporate functions, and where its business is done. *Quincy R. R. Bridge Co. v. County of Adams*, 83 Ill. R., 615. In finding the value of capital stock, etc., of a railroad company operating in this and other States, for the purpose of assessment in this State, the State Board of Equalization take the value of the entire capital stock and set apart so much thereof as the proportion of the length of its main line in this State bears to the length of the entire road. *O. & M. R. R. Co. v. Weber*, 96 Ill. R., 443. The tangible property of a corporation and the shares of stock, are separate and distinct kinds of property under different ownership, and are both liable to taxation. *Danville Banking Co. v. Parks*, 88 Ill. R., 170. The assessment and taxation of the capital stock of a corporation over and above the valuation of its tangible property is not double taxation. *Danville Lumber Co. v. Parks*, 88 Ill. R., 463.

Land dedicated by the owner as a park to the trustees of the town "for the benefit of the owners of lots fronting the same," remains private property and is subject to taxation and special assessment under the general laws. *McChesney et al. v. The People*, 99 Ill. R., 216. The purchaser of property on the first day of May is considered the owner for purposes of taxation. *Biggins v. The People*, 96 Ill. R., 381. Where a chattel is levied upon in attachment before the tax warrant comes to hands of an officer, the rights of a purchaser under the attachment will relate back to the attachment levy and he will hold the property free from the lien under the tax warrant. *Gear, Scott & Co. v. Hurd*, 92 Ill. R., 315.

For the purposes of taxation, steam engines and boilers are considered as personal property. *Johnson v. Roberts*, 102 Ill. R., 655.

Where commission merchants furnish money to country dealers with which to purchase grain, the latter to pay ten per cent interest on the money till paid and the commission merchants to receive one cent per bushel as commission in handling and selling the same: Held, that the transaction was a loan of money by the commission merchants and the grain belonged to the country dealers, and it was properly assessed and taxed to them. *Lyle v. Jacques*, 101 Ill. R., 644. A mistake in the name of the owner of property assessed, as *C. M. Jacques & Co.*, for *Jacques Bros. & Co.*, will not vitiate the assessment or tax. *Lyle v. Jacques*, 101 Ill. R., 644. Where a party, not the owner or lessee of property, having no taxable interest therein, but who is merely in joint use of the same with the owner for a compensation, is taxed for one-half its value, the tax is illegal and may be enjoined. *Irvin v. N. O., St. L. & C. R. R. Co.*, 94 Ill. R., 105. Where the legal title appears in one who is in fact but a trustee for another, but the trust is not declared, it is rightfully assessed in the name of the trustee. The trustee may have it listed in the name of the equitable owner. *The People v. Seaman's Friends Soc.*, 87 Ill. R., 246.

Property permanently located at a particular place is subject to taxation there, whether the owner resides there or not. A boat is to be taxed at its home port without regard to the place where its owner resides. *Irvin v. N. O., St. L. & C. R. R. Co.*, 94 Ill. R., 105. Where parties residing and doing business in one town or city are also engaged in a manufacturing business at another town or city, from

which place the goods manufactured are sent to the former place, all the property on hand on the first day of May at the place of manufacture is subject to taxation at that place. *Selz v. Cagwin*, 104 Ill. R., 647.

The revenue law requiring all property in this State to be assessed for taxation, does not refer to property merely passing through or in the State for a temporary purpose. *Irvin v. N. O., St. L. & C. R. R. Co.*, 94 Ill. R., 105.

The schedule returned by a party to the assessor is not an assessment until it is passed upon and approved by the assessor. *Felsenthal v. Johnson*, 104 Ill. R., 21.

Where a railroad corporation formed under the laws of this State, is consolidated with another out of the State, the consolidated company is considered as formed under the laws of this State, for the purpose of assessment of capital stock. *O. & M. R. R. Co. v. Weber*, 96 Ill. R., 443. Contractors building a railroad upon contract, but who are not vested with the franchise or right of way, are not the owners of the road for purposes of taxation. *Union Trust Co. v. Weber*, 96 Ill. R., 346.

Land held and in actual use by a railroad company for sidetracks, switches and turn-outs, is railroad track within the meaning of the revenue law. *C. & A. R. R. Co. v. The People*, 98 Ill. R., p. 354. The land constituting the right of way of a railroad, with the ties, rails, etc., in place on the track, and turn-outs, depot grounds and buildings are real estate, but the rolling stock is made by statute personal property for the purpose of taxation. *Union Trust Co. v. Weber*, 96 Ill. R., 346. Where a lot is returned by a railroad company in its list as being used for tracks, etc., in connection with the road for railroad purposes, and the Board of Equalization assess the same, and taxes are levied and paid thereon, an assessment by the local assessor of the same lot, will be double assessment and illegal. *C. & A. R. R. Co. v. The People*, 99 Ill. R., 461. The rolling stock and track of railway companies are to be assessed by the State Board of Equalization, but all other railroad property is to be assessed by the local assessors. *C. B. & Q. R. R. Co. v. Siders*, 88 Ill. R., 320.

The revenue law makes it the duty of the owner, where a tract of land is divided into parcels so that it can not be described without metes and bounds, to cause such lands to be surveyed and platted into lots, and the plat certified and recorded according to law. Where this is done, the lots may be assessed according to their number. *The People v. C. & A. R. R. Co.*, 96 Ill. R., 869. A survey and platting of land by a deputy county surveyor, at the instance of an assessor, without any notice by the county clerk to the owner, or not at the request of the clerk, the plat not being recorded, is not a compliance with the statute (§ 67 § 62, Revenue law), and binding on no one. *The People v. C. & A. R. R. Co.*, 96 Ill. R., 369.

Any description of property for the purposes of taxation by which the property may be identified by a surveyor with reasonable certainty, is sufficient. *Fowler v. The People*, 93 Ill. R., 116. A lot assessed as "Lot 5 in assessor's subdivision of the west half of Section 1, Township 13, N. R. 12 west," no number of acres being given, when it appears that no plat of any such lot as described was ever made and recorded, is insufficient in description and no judgment for taxes can be had thereon. *Sanford v. The People*, 102 Ill. R., 374. An assessment for taxes made by a person not authorized by law, as an assessment by a township assessor of railroad property that should be assessed by the State Board of Equalization, is void. *C. & A. R. R. Co. v. The People*, 98 Ill. R., 350.

Where the proper appointing power in a town meet and determine that there is a vacancy in the office of assessor by a failure to elect, and they appoint one who qualifies, his acts in making an assessment as a de facto officer will be valid until he is ousted by a proper proceeding for that purpose. *The People v. Lieb*, 85 Ill. R., 484. Assessors may act upon their own knowledge and judgment in fixing the value of property, and it is not essential to the validity of an assessment that they should hear evidence as to its value. *St. L., V. & T. H. R. R. Co. v. Surrrell*, 98 Ill. R., 535.

The statute gives an appeal from the action of the assessor to the town board of review, and again to the county board, and a party must avail himself of these means to remedy any grievance in the assessment of his property. *Felsenthal v. Johnson*, 104 Ill. R., 21. On an application to have taxes refunded on the ground that the land was not subject to taxation, the county board may well refuse to have the same refunded where they have not reasonable grounds to be satisfied that the property is not liable to taxation. *Champaign Co. v. Reed*, 100 Ill. R., 304. A county board has no power to make an abatement in taxes legally assessed. *Madison Co. v. Smith*, 95 Ill. R., 328. If any material increase is made by a county board in the aggregate amount of all the towns, in equalizing the valuation between the different towns, beyond what is actually necessary or incidental, it is without authority and void. *Kimball v. Merchants' Saving and Trust Co.*, 89 Ill. R., 611.

The State Board of Equalization has power to increase the valuation of railroad property returned by the officers of the corporation, without first hearing evidence impeaching the return. *St. L. V. & T. H. R. R. Co. v. Surrrell*, 88 Ill. R., 535. The State Board of Equalization should assess railroad track and rolling stock of railway companies in this State, and an assessment of such property by the local assessor is void. *C. & A. R. R. Co. v. The People*, 98 Ill. R., p. 350. A railway company can not be heard to object because the board of equalization has failed to assess the value of the road beds under the rails, including bridges, embankments and culverts of all railroads in the State as tangible property. *C. B. & Q. R. R. Co. v. Siders*, 88 Ill. R., 320. The distribution of the taxable property of a railroad among the

counties through which the road runs, is a mere ministerial act, and may be done by the secretary of the board of equalization after the adjournment of the board. *Wilson v. Weber*, 96 Ill. R., 454.

A tax for State purposes is not void, in whole or in part, because the rate per cent fixed by the governor and certified by the auditor will produce a larger amount than is authorized by law to be levied. *Edwards v. The People*, 88 Ill. R., 340; *Union Trust Co. v. Weber*, 96 Ill. R., 346. Any certificate by the town clerk, no matter in what form of words, which gives the board of supervisors to understand definitely what amount of taxes is required to be levied for town expenses, is sufficient. *Gage v. Bailey*, 102 Ill. R., 11.

Lands are liable to back taxes, interest, penalty and costs, under § 135 § 129 of the Revenue law, when they have been forfeited to the State, whether the forfeiture was in due form or not. *Belleville Nail Co. v. The People*, 98 Ill. R., 399.

A warrant is indispensable to the power of a collector to levy and distrain for taxes, and it is essential to the creation of a lien on the personal property of the person charged with taxes. *Ream v. Stone*, 102 Ill. R., 359. The tax book and warrant should not be delivered to the town collector until he has given bond and taken the oath of office. *Leib v. Henderson*, 91 Ill. R., 282. Where a county clerk delivers the assessor's book and blanks to one appointed to the office of assessor, and who is possessed of the proper evidence of such appointment, he has discharged his duty, and cannot be compelled to deliver the same to another person claiming the same office by election. *The People v. Leib*, 85 Ill. R., 484. The want of a clause in the collector's warrant authorizing him to distrain for taxes, does not render the warrant void. *Union Trust Co. v. Weber*, 96 Ill. R., 346.

The statutory lien of the bond of a collector of taxes attaches to all the lands owned by the principal at the time of the approval of the bond, and also to after-acquired lands. *Crawford v. Richeson*, 101 Ill. R., 351.

A notice of sale of property for taxes described the property, which was bulky, as standing on a certain fractional quarter section, and that the sale would be at R. in W. county, and the evidence showed that the quarter section named in the notice was in the town of R. Held, that the reasonable understanding from the notice was that the sale was to be at the place in R. where the property was standing. *Lyle v. Jacques*, 101 Ill. R., 644.

The statute making the collector's report to the county court on application for judgment against the lands for taxes, prima facie evidence that all the requirements of the law have been complied with, is not unconstitutional. *Burbank v. The People*, 90 Ill. R., 554.

The statute requiring the payment of one per cent a month on unpaid taxes after May first, is constitutional. This statute does not apply, however, to taxes of 1878 and prior years. *The People v. Peacock*, 98 Ill. R., 172.

The statute requiring the delinquent list to be filed five days before the term of court at which application is to be made, is directory merely and a literal compliance is not essential to the jurisdiction of the court. *Leindecker v. The People*, 98 Ill. R., 21. A description of the land in a notice of sale for taxes served upon the occupant, describing the property as "Lot 5, lot 23, in Carpenter's Addition," etc., instead of "Lot 5, in block 23," is sufficient. *Garrick v. Chamberlain*, 97 Ill. R., 620. Application for judgment against delinquent lands for State and county taxes is required to be made at the May term of the county court, but in respect to special assessments levied by a city or town, organized under the general incorporation law, the city council may appoint the term of court at which such application may be made. *Leindecker v. The People*, 98 Ill. R., 21. On application for judgment against lands for taxes, proof that the lands were assessed for more than they would sell for is not admissible. *English v. The People*, 96 Ill. R., 566. As municipal corporations can levy no taxes unless the power be plainly and unmistakably conferred, it devolves upon the People, in an application for judgment on a city tax, to show that such tax has the sanction of law for its support. *English v. The People*, 96 Ill. R., 566.

In proceedings for judgment for taxes, the collector's return fills the place of a declaration and judgment cannot be rendered thereon for matters not embraced in its allegations. *Mann v. The People*, 102 Ill. R., 346. The making and filing of the delinquent list, with description of the property, and the publication of notice of the application, are essential to give the court jurisdiction in an application for judgment for taxes. *The People v. Dragstran*, 100 Ill. R., 286. Any defect in, or even want of notice, of an application for judgment against lands for taxes, is obviated by the appearance of the taxpayer and contesting the tax on its merits. *Hale v. The People*, 87 Ill. R., 72. No judgment for taxes can be rendered against property so imperfectly described in the assessment as not to be capable of location. *The People v. C. & A. R. R. Co.*, 96 Ill. R., 369. On application for judgment against delinquent lands for taxes, the court has no power to reduce the assessment for over-valuation. If property is assessed too high, the owner should apply under the 86th or 97th section of the Revenue Act to have the assessment corrected. *The People v. Big Muddy Iron Co.*, 89 Ill. R., 116.

A judgment in the county court for taxes is not conclusive upon the owner of the liability of the land for the taxes assessed, where he does not appear and contest the application for judgment, and he may still contest the legality of the tax in another proceeding. *Gage v. Bailey*, 102 Ill. R., 11. The land owner by appearing and urging general objections to application for judgment for taxes, waives objec-

tions as to the sufficiency of the notice for application. But such an appearance does not change the proceeding into one in personam. Where the error in proceedings against land for taxes is such that a judgment is a nullity and void, error may be assigned on such judgment although no objection was made or exception taken in the county court. *The People v. Dragstran*, 100 Ill. R., 286. A person not the owner or not having any interest in the land, has no right to object to judgment against the same for taxes, unless he appears as agent or attorney of the person interested. *Hosmer v. The People*, 96 Ill. R., 58.

Where land has become forfeited to the State for non-payment of taxes, a county board has no power to set the forfeiture aside. Neither has such board power to make an abatement of taxes legally assessed, extended and placed in due course of collection. If a party is aggrieved by an over-assessment he should apply to the board of review to have it corrected, or to the July session of the board under the 97th section of the Revenue Law. *Madison Co. v. Smith*, 95 Ill. R., 3228.

A purchaser of land at a tax sale by one whose duty it was to pay the taxes, will operate as a payment of the taxes only, and the purchaser will not be permitted to acquire any title by such purchase. *Lewis v. Ward*, 99 Ill. R., 525. A municipal corporation has no power to purchase lands at a tax sale and acquire title by complying with the statute in regard to such sales. *City of Champaign v. Harmon*, 98 Ill. R., 491.

If a judgment for taxes may be inquired into on a bill in chancery, and it may be shown that part of the taxes included in the judgment is illegal, the owner should be allowed to redeem from the sale by paying the redemption money allowed by the statute had the judgment and sale been for the proper amount of taxes. *Gage v. Busse*, 102 Ill. R., 592. The county clerk is the proper person to receive the redemption money, and it is his duty to inform the owner seeking to redeem of the correct amount to be paid for that purpose, and if the clerk misinforms him as to the amount required, and fails to require the payment of taxes subsequent to the sale, a court of equity will protect the owner upon his payment of such subsequent taxes, notwithstanding the land may have been again sold for such taxes. *Payne v. Newcomb*, 100 Ill. R., 611.

A notice of tax sale upon a person occupying the lands sold, is sufficient although such occupant is not the owner. *Garrick v. Chamberlain*, 97 Ill. R., 620. It is not necessary that service of the notice of a tax sale should be had on the premises, but it may as well be made elsewhere. *Gage v. Bailey*, 102 Ill. R., 11.

The fact that several lots were included in one certificate of purchase, affords no evidence that they were not sold separately and in consecutive order. The sale and redemption book used by the collector in making the sale affords the only evidence as to the manner in which lots have been sold. *Gage v. Bailey*, 102 Ill. R., 11. A part owner of land seeking relief from a forfeiture of his land for taxes, for a refusal to pay upon the whole tract should show by his petition the distinct part of the tract of which he claims to be owner. *Madison Co. v. Smith*, 95 Ill. R., 328.

A mere taxation of property imposes no personal liability upon the owner. Resort can be had for the collection of the tax only to the thing taxed. *Craw v. Village of Tolono*, 96 Ill. R., 255. Although property may become forfeited for taxes at a time when a particular person is owner, yet if the taxes were assessed for prior years, when he was not the owner of the property, there can be no personal liability on him to pay the tax. *Biggins v. The People*, 96 Ill. R., 381.

A recovery of a personal judgment against the owner of real estate for taxes, does not discharge the lien on the real estate. *The People v. Stahl*, 101 Ill. R., 346. The failure to return taxes assessed against railroad property as delinquent will not affect the rights of the State or municipalities. The tax becomes a lien from the first day of May and the lien continues until it is paid. *Union Trust Co. v. Weber*, 96 Ill. R., 346. The taking a mortgage upon real estate charged with a subsisting lien for back taxes not brought forward or extended, will not operate to discharge such taxes or release the lien of the same. *Union Trust Co. v. Weber*, 96 Ill. R., 346. A court of chancery has no jurisdiction to enforce the lien upon real estate given by the statute for taxes; such lien can be enforced only in the mode pointed out in the statute. *The People v. Biggins*, 96 Ill. R., 481. A tax on the capital stock and franchise of a corporation becomes no lien upon the real estate of the corporation until made so by the collector taking the proper steps to make it such. *Belleville Nail Co. v. The People*, 98 Ill. R., 399. Taxes assessed upon real property become not only a debt against the owner, which may be recovered in a personal action, but also a charge upon that particular tract of land and no other tract. *Binkert v. Wabash R'y Co.*, 98 Ill. R., 205.

Taxes assessed upon real property become a lien upon such property from and including the first of May in the year they are levied until paid. *Binkert v. Wabash R'y Co.*, 98 Ill. R., 205. It is not essential to the lien given by law for taxes, that an actual levy should be made within the year. It may, by authority of the legislature, be made in subsequent years. *Fairfield v. The People*, 94 Ill. R., 244. The lien on the personal property for taxes created by the warrant, if not perfected by a levy, will be lost after the return of the warrant. *Ream v. Stone*, 102 Ill. R., 350. The mere assessment of taxes upon personal property will not create a lien upon the property. The warrant for the collection of taxes becomes a lien from the time it comes to the officer's hands. *Gaar, Scott & Co. v. Hurd*, 29 Ill. R., 315; *Binkert v. Wabash R'y Co.*, 98 Ill. R., 205. Back taxes are not a lien upon personal property until the collector's books with a warrant are placed in his hands. *Ream v. Stone*, 102 Ill. R., 359.

A failure to complete an assessment, or to return the same in the time required by the statute, will not vitiate it. *Wright v. The People*, 87 Ill. R., 582. Mere irregularities in valuation or levying taxes not affecting substantially the justice of the tax, will not be considered. *Law v. The People*, 87 Ill. R., 385. Errors and informalities in the assessment levy, and collection of taxes, not affecting the substantial justice of the tax, present no grounds to defeat its collection. *Edwards v. The People*, 88 Ill. R., 340.

The collection of a tax should never be enjoined except where the tax is levied upon property exempt from taxation, or where it is doubly taxed, or the tax is levied without warrant of law, or by persons having no power to make a levy, or in cases of fraud in making the valuation. *Union Trust Co. v. Weber*, 96 Ill. R., 346. The want of perfect equality in taxation is no ground to defeat a judgment for taxes. *Edwards v. The People*, 88 Ill. R., 340. A court of equity will entertain a bill to restrain a tax fraudulently assessed, but not for a mere excessive valuation, and irregularity in the assessment. *Gage v. Evans*, 90 Ill. R., 569. The collection of a tax properly levied will not be enjoined because there may be a threat to use the money for an illegal purpose when collected. *Town of Lemont v. Singer & Talcott Stone Co.*, 98 Ill. R., 94. A bill to enjoin the collection of a tax which fails to show an equitable excuse for not applying to the town board of review or county board, for relief, is bad on demurrer. *Johnson v. Roberts*, 102 Ill. R., 655. A failure to certify a school tax by the directors, by the day named in the statute, does not invalidate the tax. *Moore v. Fessenbeck*, 88 Ill. R., 422. On a bill to enjoin the collection of a portion of a tax on the ground it is illegal, there must be a tender of the amount admitted to be legal. *Johnson v. Roberts*, 102 Ill. R., 655. The listing or assessing of railroad property in a wrong name as owner, forms no ground for enjoining the collection of the tax. Property is liable to pay a tax without reference to its ownership. *Union Trust Co. v. Weber*, 96 Ill. R., 346. Where the proceedings to establish a high school are regular and in conformity to a valid law, the levy and collection of a tax to maintain such school will not be enjoined. *Richards v. Raymond*, 92 Ill. R., 612. The fact that school directors may have lost or squandered part of the funds raised from the sale of bonds issued to build a school house, is no ground for enjoining the collection of a tax levied to pay interest on such bonds. *Town of Lemont v. Singer & Talcott Stone Co.*, 98 Ill. R., 94. A foreign corporation can not interfere by bill to enjoin the collection of taxes legally or illegally assessed against a domestic corporation, unless the former will be injuriously affected by the collection of such taxes. *Archer v. T. H. & I. R. R. Co.*, 102 Ill. R., 493. A municipal corporation can not maintain a bill to restrain the collection of a tax levied on property within its limits to pay bonds of the corporation, although they are illegal. Only taxpayers can complain of such tax. *City of Waverly v. Auditor of Public Accounts*, 100 Ill. R., 354. Courts cannot convert themselves into assessors of property for purposes of taxation, and re-assess in every case where an assessor has erred in judgment as to the value of property, and the collection of a tax will not be enjoined merely because of an erroneous judgment as to the value of property. *Traders Ins. Co. v. Farwell*, 102 Ill. R., 413. A tax levied to pay municipal certificates issued in excess of the constitutional limitation of indebtedness, is illegal. *Law v. The People*, 87 Ill. R., 385. A city tax levied upon an assessment made under a law after its repeal, and not in accordance with the law in force at the time, is invalid. *Burbank v. The People*, 90 Ill. R., 554. A city tax levied to pay bonds issued in aid of a private manufacturing company can not be enforced, as such bonds are void. *English v. The People*, 96 Ill. R., 566. Where bonds have been issued by a township to a railroad company under a vote at an election held without authority of law, neither the State nor the local officers have authority to cause a tax to be levied for the payment of such bonds, and they may be enjoined from attempting to do so. *Rutz v. Calhoun Co.*, 100 Ill. R., 392. Where the indebtedness of a city exceeds the constitutional limitation of five per centum, the levy and collection of a tax for the purpose of paying an additional indebtedness incurred before such levy, in violation of the constitution, will be enjoined. *Howell v. City of Peoria*, 90 Ill. R., 104.

ELECTIONS.

An election held by persons who are officers de facto is not void. *Lippincott v. Town of Pana*, 92 Ill. R., 24. Under the law for the incorporation of cities and villages, that on petition of one-eighth of the legal voters of a city or village, the mayor and city council shall submit the question of incorporation under the general law to a vote, and appoint a time and place for the election, the mayor alone had no right to call such election. *Stephens v. The People* 89 Ill. R., 337. It is essential to the validity of an election that it be held at the time and in the place provided by law. Where the time and place of an election are fixed by law, it has been held that an omission to give the proper notice of the election will not vitiate an election held on the day appointed by law; but where the law fixes no time or place, leaving the same to be determined by some authority named in the statute after the happening of some condition precedent, the election must be called and held at the time and place fixed by the authority designated by law, and none other. *Stephens v. The People*, 89 Ill. R., 337. Where an election was required to be conducted the same as general elections, having three judges of election and two clerks, was held by one acting in the capacity of moderator of a town meeting, with but one clerk, it is absolutely void. *Lippincott v. Town of Pana*, 92 Ill. R., 24. Mere irregularities in conducting an election and counting the votes, not proceeding from any wrongful intent, which deprive no legal voter of his vote and do not

change the result, will not vitiate the election. *Hodge v. Linn*, 100 Ill. R., 397; see also *Bacon v. Malzacher*, 102 Ill. R., 663.

A vote for a candidate on a separate slip of paper folded within the numbered ballot deposited, but not attached to it, is properly rejected. *Webster v. Gilmore*, 91 Ill. R., 324. A ballot once deposited in the ballot-box will be presumed to be a legal vote until there is evidence to the contrary. *Clark v. Robinson*, 88 Ill. R., 498. Where it is shown the ballots have been improperly handled by the contestant out of the presence of the other party or of the election officers, rendering it possible for them to be tampered with, the ballots will not prevail as evidence over the result as shown by the poll books, tally lists and certificate of the canvass by the election officers. *Kingery v. Berry*, 94 Ill. R., 515.

The returns of an election consist of the certificate of the officers conducting the same, entered on the poll books, together with a list of voters, and one of the tally lists, all of which are to be carefully enveloped, sealed and delivered to the county clerk. *The People v. Powell*, 91 Ill. R., 525. Returns of town elections should be authenticated by the judges and clerks of elections in the manner indicated in § 61 of the general election law. Where the judges and clerks of election have neglected to sign their names to the statements or certificates of the result, they may be permitted to do so at any time before the board of canvassers have completed their canvass; and where the only defect in the returns of an election was that the statements or certificate was not signed by the judges and clerks of election, it was held that the canvassers had no right to act upon such returns without an amendment thereto by adding the signatures of the judges and clerks of elections. *The People v. Nordheim*, 99 Ill. R., 553. The canvassing board of an election must determine for itself whether the papers transmitted are, within the meaning of the law, returns of an election. *The People v. Nordheim*, 99 Ill. R., 553.

A person who has been laboring under some kind of illusion or hallucination, but not so as to incapacitate him for the general management of business, which illusion or hallucination does not extend to political matters, cannot be denied the privilege of the election franchise on the ground of a want of mental capacity. *Clark v. Robinson*, 88 Ill., 498. The constitutional provision as to residence of a voter means that he shall have a permanent residence in the State, county, town and precinct where he offers to vote. *Johnson v. The People*, 94 Ill. R., 505. A pauper remaining at the county poor house, sent there from another township, does not acquire a residence in the township where the poor house is located so as to entitle him to vote in the latter township. *Clark v. Robinson*, 88 Ill. R., 498.

The ballot of an unregistered voter, received by the judges of election on his affidavit, will not be rejected because the other proof of his qualification was made by a person not a householder and registered voter. *Clark v. Robinson*, 88 Ill. R., 498. On the contest of an election, it is error to reject the vote of an unregistered person whose vote was received without challenge or objection, without proof showing that he was not entitled to vote. *Kuykendall v. Harker*, 89 Ill. R., 126. In a contested election where the proof showed that persons of foreign birth voted who had only made declarations of their intention to become citizens, it was held that their votes should not be counted. *Clark v. Robinson*, 88 Ill. R., 498. Where an election board permits a person to vote, that creates a prima facie presumption of his right to vote, which must be overcome by proof, on a contest of election. *Webster v. Gilmore*, 91 Ill. R., 324. There is no authority for rejecting a numbered ballot because it was folded with one which was not numbered. *Clark v. Robinson*, 88 Ill. R., 498. A vote should not be rejected because it was not personally given by the voter, but was handed from the voter to the judges by a third person, the ballot being all the time in sight of the judges of election. *Clark v. Robinson*, 88 Ill. R., 498. A ballot with the names of two persons on it, one written and the other printed, with the office voted for erased, cannot be counted for either person. *Clark v. Robinson*, 88 Ill. R., 498. Ballots cast for "E. Clark" and "Clark," counted for "E. E. Clark;" so ballots cast for "W. E. Robes," "Robertson," "W. E. Robers," and "Robin" counted for "William E. Robinson." *Clark v. Robinson*, 88 Ill. R., 498. A bet on the result of an election is illegal and void. *Petillon v. Hipple*, 90 Ill. R., 420.

"The first section of the official voting Act, approved June 22, 1891, excepts from its operation trustees of schools, school directors and members of boards of education. Notwithstanding this fact, the proposition for or against the establishment of a township high-school is a 'public measure,' within the meaning of § 16, as construed in *Union County v. Ussery*, 147 Ill., 204. But, no provision is made in the Act for printing and distributing the ballots for school elections, and it is, therefore, clear that the legislature, by providing for the printing and distributing of ballots 'for all elections to which this Act applies,' intended that it should not apply to school elections. This intention is made still clearer by § 29 of the school law, which provides that the proposition for or against a high-school may be printed on the same ballot with the names of candidates for trustees. Although the proposition to establish a high-school may be a public measure, there appears to be a clear intention of the legislature that it shall be voted on under the school law, and not under the official ballot law." 160 Ill., 557.

"If you wish to vote for candidates named in each list put your vote-mark in the square before the name of every candidate you wish to vote for, being careful not to vote for more than fourteen. If you mark more than that number, none of your votes will be counted. If you mark less than that number, your vote will be counted only for every candidate so marked."

"If you mark a cross in the circle at the top of one list and another cross in

the square before the name of any candidate in another list your vote will be counted for that one candidate only."

From these instructions it is plainly seen that no elector should use the party vote-mark unless he intends to surrender his personal liberty of election wholly to "the machine." The individual vote-mark (in the quadrangle before the name of every candidate, whether in one or another list, for whom the elector intends to vote), alone gives liberty of personal choice without risk of loss of votes.

Within almost a century since Illinois became a member of our national union, no enactment by its legislative organ has given cause for so many judicial decisions as have been rendered by the State's supreme court alone in cases produced by this mongrelized Australian voting law since its enactment. The subjoined citations are from those of chief importance to electors as well as to officials charged with the conduct of election.

"Every legal voter has a right to vote for a candidate of his own selection, and if his name is not printed on the official voting-paper, the voter may write it in some blank space on any list of candidates thereon, making a cross in the square before the name." 197 Ill., 432.

"If one of the lists of candidates has a blank space thereon (the nominee having withdrawn), a voter may write in the name of his candidate in such space and mark a cross in the circle at the head of such list, in which case his vote should be counted for all candidates named in such list, those whose names are printed as well as the one whose name is written." 197 Ill., 432.

"If a voter desires to vote for a person whose name is not on the ticket he may write the name of the candidate of his choice in a blank space on the ticket and make a cross opposite thereto, but he has no right to substitute for such method the pasting of a slip of paper, containing the name of his candidate over the name of some other candidate. Ballots prepared by pasting a slip of paper, with a name printed thereon, over the name of a candidate printed on the ticket are invalid, and can not be counted for any candidate thereon." 196 Ill., 99.

"The rule that an elector should not be deprived of his right to vote by mere inadvertance, mistake or ignorance, if an honest intention can be ascertained from his voting-paper, is not changed by the official ballot Act, the 26th section of which expressly rejects the paper if the voter marks more names than there are persons to be elected to an office; or if, for any reason, it is impossible to determine his choice for any office to be filled." 158 Ill., 609.

"The requirement of the law that the voting-paper be marked by a cross, 'in the appropriate margin or place opposite to the name,' is directory, and the voter's intention should be given effect if it can be ascertained from his marking with due regard to the requirement of secrecy." 158 Ill., 609.

"The use of a mark that furnishes means of avoiding secrecy requires rejection of the voting-paper, and this although the law contains no direct prohibition of distinguishing marks. An honest attempt to obey the directions of the law must appear in order to permit the votes marked to be counted." 158 Ill., 609.

"Writing a word at the head of a list of candidates; making a single mark through the circle or the square; making any irregular character, not being any form of a cross, in the circle, or in any square; making a cross opposite to a name, but outside of the square; signing the name (or initials) of the voter on the voting-paper; or if any mark or character is used that serves the purpose of indicating the voter who used it, thereby furnishing to designing persons the means of evading the law as to secrecy, the voting-paper should be rejected." 158 Ill., 609.

"Erasure of the names of candidates by pencil marks drawn through them does not necessarily constitute a distinguishing mark which requires rejection of the voting-paper as to other candidates." 158 Ill., 609.

"Marking a voting-paper by a cross in the circle at the head of two lists of candidates will not prevent a vote being counted for a candidate named on one list for an office for which no candidate is named on the other list; although no vote can be counted for any candidate for an office for which the name of a candidate appears in both lists." 158 Ill., 609.

"A mark on a voting-paper which manifestly is not an attempt to make a cross of any kind is cause for rejection of such voting-paper." 158 Ill., 609.

"A voting-paper marked with a cross in the circle at the head of one ticket, and the other tickets are erased by drawing lines through them, should not be counted, such erasure being equivalent to a distinguishing mark." 192 Ill., 58.

"Where a voting-paper is marked in the circle at the head of each of two tickets, and in the square before the names of certain candidates, the vote can be counted only for the particular candidates so marked. A mark in the circle of two tickets neutralizes each, and is equivalent to a mark in neither." 192 Ill., 58.

"The ballot delivered by the judges of election to the voter must be prepared by him individually after he enters the booth—excepting in case of an illiterate voter—and he must prepare it uninfluenced by being furnished with 'tickets' or 'pasters.'" 172 Ill., 426.

"A voter may deliver his vote for the candidate of his choice, although the name of such candidate is not printed on the official voting-paper; but in such case the name must be written in a blank space on the voting paper and a cross marked opposite thereto." 172 Ill., 426.

"A voting-paper marked only by pencil erasures of all the names on one list of didates can not be counted." 158 Ill., 649.

"A cross at the right of the name of a candidate, between it and the square opposite the name of an opposing candidate, does not sufficiently show the voter's intention in order to permit his vote to be counted for either." 158 Ill., 649.

"Where a number of voting-papers have a cross in the circle at the head of one list of candidates and the name of a candidate written in a blank space on such list, the absence of a cross in the square before such candidate's name does not constitute a distinguishing mark. . . . The distinguishing mark which is prohibited by the statute is such a mark as will separate and identify the particular voting-paper from others." 197 Ill., 432.

"Keeping the voting-papers, after they have been sealed as required by the statute, in an unlocked bureau drawer in the township clerk's dwelling, it appearing that the seal had not been broken and that the voting-papers had not been tampered with, does not prevent them from being the best evidence of the result of the election as against the return of the election judges." 158 Ill., 609.

"Ballots properly preserved are the best evidence of the result, and want of care for their preservation destroys their force as evidence." 159 Ill., 127.

COUNTIES.

County boards have not the power to consolidate several towns into one, except upon proper petition and submission of the question to the voters of the several towns, as provided by the statute. *The People v. Brayton*, 94 Ill. R., 341. The county board has no authority to relieve a county officer from his duty to make regular reports of his receipts from the fees of his office, or from his duty to pay into the county treasury the excess of such receipts over his fixed salary, by any contract with the officer in respect to the expenses of his office. *Briscoe v. Clark County*, 95 Ill. R., 309. The officers or official agents of a county have no power to issue commercial paper without express legislation therefor. *The People v. Johnson*, 100 Ill. R., 537.

Where a board of supervisors made an appropriation to aid in the construction of a bridge, having previously rescinded a resolution that orders should not be issued in fractions in discharge of such appropriation, the rescinding of the resolution was held by implication to sanction the issuing of orders in small amounts in discharge of the appropriation. *Board of Sup'rs v. Sage*, 89 Ill. R., 265. A county board having authority to contract for the repair of a court house, and not being restricted as to the amount or mode of payment, may issue interest bearing orders therefor. *County of Jackson v. Rendleman*, 100 Ill. R., 397. A county board cannot allow or pay interest on common county orders issued for current county expenses. *Hall v. Jackson County*, 95 Ill. R., 352. A county order does not possess the qualities of commercial paper so as to cut off equities of the corporation when in the hands of an assignee. But an assignment of a county order is valid to pass the legal title of the payee, so as to enable the assignee to sue in his own name. The loss of such an order, even though indorsed in blank, will not affect the right of the payee to payment of his debt. *The People v. Hurd*, 100 Ill. R., 537. It is error to render a judgment for costs against a county. *The People v. Emigh*, 100 Ill. R., 517.

ANIMALS.

Under the stock law of 1874 an election may be held at any general election, or every such election until the result shall be against cattle running at large, notwithstanding a previous vote allowing them to run at large. But after a vote requiring domestic animals to be kept up by their owners, no other vote upon that subject is allowed until after the expiration of five years. *Vogt v. Dunley*, 97 Ill. R., 424.

The owner of domestic animals, such as dogs, horses and oxen, not naturally inclined to mischief, is not liable for an injury committed by them to the person or personal property of another, unless it be shown such owner previously had notice of the animal's propensity to mischief, or that the injury is attributable to some other neglect on his part. *Mareau v. Vanatta*, 88 Ill. R., 132.

ROADS AND BRIDGES.

A person who prosecuted a petition to alter a road over his land before the commissioners of highways, and was present at every step taken, will not be allowed, by certiorari, to question the legality of the proceeding, in case the decision is adverse to him. If he acts in the matter as though the proceeding was in conformity to the law, he will be bound by his acts, and estopped from questioning its legality or regularity. A party seeking the alteration of a road over his land, by appearing before the commissioners of highways at their meeting to determine whether to grant the application, and is heard by them, admits that proper notice of the time and place of the hearing was given, and he will, thereafter, be estopped from denying the same. Where a party appears at the time and place fixed for the hearing by the supervisors, of an appeal from the highway commissioners, and obtains a continuance of the time of the hearing, and on the day to which the same was continued he and the other parties appear, and are heard until the final conclusion is reached, he will be estopped from urging afterward that sufficient notice of the appeal was not given. Where highway commissioners recite, in their order denying the prayer of a petitioner to alter a road, that they met at the time and place

named in the notice of the hearing, that will be sufficient evidence that proper notice was given. The statute does not require the supervisors on an appeal from an order of the highway commissioners, on granting a continuance of the hearing of the appeal, to make proclamation of the continuance or postponement. All persons having an interest are presumed to be present, and to take notice of the adjournments of the supervisors. The statute does not require the supervisors, to whom an appeal is taken from an order of the highway commissioners to announce their decision within twenty days from their first meeting. It fixes no time in which their decision shall be reached and announced. It is sufficient if the report of the supervisors shall be filed with the town clerk within ten days after it has been made. *Board of Supervisors v. Magoon*, 109 Ill. R., 143.

Where a person who takes an appeal from the decision of the commissioners of highways appears and contests the matter in controversy at every step, without making any objections to the proceedings before the commissioners, so as to afford an opportunity to obviate the same by amendment, he cannot take advantage of such objection, made for the first time on trial of the appeal. *Huston et al. v. Clark et al.*, 112 Ill. R., 344; *Blake v. The People, etc.*, 109 Ill. R., 504.

The commissioners of highways refused to grant the prayer of a petition for the laying out of a highway, and their order was filed in the town clerk's office, whereupon a party interested appealed from the decision of the commissioners, by filing, as he claimed, the necessary papers before a justice of the peace. The latter selected and summoned three supervisors to hear the appeal, who made a preliminary order granting the prayer of the petition, then filed with the justice a certificate asking for a jury to assess damages. The justice issued a venire for a jury, and fixed a day for the trial, when a common law writ of certiorari was served upon him: Held, that the writ could bring nothing before the court except the petition for the appeal, the appeal bond and the certificate asking for a jury, these being the only papers required to be filed before the justice, and that as no court could decide, from these alone, the legality of the proceedings, the writ was properly dismissed. The writ should not have been sued out until the proceedings were completed, and the papers filed with the town clerk. *Gerdes v. Champion*, 108 Ill. R., 137.

While the commissioners of highways, by the statute, may make such changes between the termini of the road specified in the petition, as the convenience and interest of the public, in their judgment, may require, yet they have no right to change either terminus of the road, and if they do so, the proceedings will be quashed on certiorari. It is not the office of a common law writ of certiorari to afford the complaining party an opportunity of having his case retried, but the object of the writ is to have the proceedings in the inferior tribunal quashed and annulled altogether. *Deer v. Commissioners of Highways*, 109 Ill. R., 379.

Under the road laws in force in 1853 the county court, upon the return to it of the viewers report, with a plat showing courses and distances, was required to fix the width of a public road in the order establishing the same, and enter the same on record. The statute did not of itself fix the width of the road. It was simply directory, that the court should determine that matter. Where the county court, in its order establishing a public road, failed to fix the width of the same, and it appeared that such road was opened, traveled and worked upon only the width of 40 feet for many years, when the commissioners of highways threatened and were preparing to open the road four rods wide through the premises of a person complaining against the same, it was held, that the opening of such road beyond the width of 40 feet was properly enjoined on bill in equity. *Commissioners of Highways v. Harrison*, 108 Ill. R., 398.

The public traveled over certain premises as they would over a public street in a city, from 1850, or earlier, until in 1866 or 1867, when the owner of the land closed the travel by fencing up the street, during which time there was a line showing the travel, and the lines of gutters were or had been marked by plowing furrows and scraping the earth to the middle of the street, some of which work was done by the municipal authorities, it appearing that at the time of such travel the premises were vacant and unoccupied, and there were but few houses or other improvements in the vicinity: Held, that the facts would not justify an inference of a public street by dedication, or estop the owner from denying a dedication. *Herhold et al. v. City of Chicago*, 108 Ill. R., 467.

"Section 13 of the highways law requires that the commissioners, on their semi-annual meeting the first Tuesday in September, 'determine what per cent of taxation shall be levied on property in the township for road and bridge purposes and for the payment of any outstanding orders drawn by them on their treasurer.'"

"A road and bridge tax levied by the highway commission at a place and time different from the place and time prescribed by the statute, is illegal." 193 Ill. R., 504.

"In making a levy, the commissioners of highways can act only in the manner and at the time specified in the statute. They must exercise the powers conferred on them by the law as they are given, or their acts will be nugatory. But (in this case) the record of the highway commission shows that a meeting was had on the first Tuesday in September, as the law requires, and the matter of fixing the road tax was brought up; but, as one of the commissioners was absent, the meeting was adjourned for final action to the 13th of September. The commissioners having met on the day specified in the statute, we do not think it was an abuse of power to defer action by adjournment to a specified day and resume the business which had been commenced at the time prescribed by the statutes." 127 Ill. 22.

"But in the case at bar, no meeting of the commissioners was held on the first Tuesday in September, but the first meeting of the commissioners to fix the rate and levy the road and bridge tax was held a week after the day fixed by the statute. Their action is therefore void." 201 Ill., 351.

The certificate by the commission to the board of auditors and the assessor of the necessity for a greater levy must be given in writing, and it ought to contain a statement of the contingency that causes the need of a greater levy.

"A verbal statement by highway commissioners to said board that an additional levy is needed is not a compliance with the statute requiring the commissioners to certify the same to the board of auditors and assessor." And, "consent by the board of auditors and assessor to an additional levy of road tax, given without a certificate in writing from the highway commissioners that in their opinion such additional levy is needed is insufficient to authorize a valid levy." 200 Ill., 237.

The consent of this board to the greater levy should also be given in writing, and should specify the purpose for which the additional levy is allowed.

"Jurisdiction of the person of a resident land owner in a proceeding to assess damages to the owners of lands over which a road is to be established cannot, under a proper construction of § 43, road and bridge Act, be had by delivering a copy of the notice to the occupant of the land, and by posting notice, etc., as in the case of nonresident owners." 193 Ill. R., 304.

The final order of the highway commission to establish, to change the course of, to widen or to vacate a public highway, is an instrument of supreme importance. "If the sole reliance for the establishment of a public highway is placed on the final order of the highway commission, the sufficiency of such order depends on the recitals and directions contained therein. While the presumptions are in favor of the various steps preliminary to the entry of an order establishing, altering or vacating a road, yet if the recitals and orders omit any essential element, and such omission is not supplied by the papers relative to the antecedent proceedings, such order does not establish the existence of the road." 194 Ill., 355.

So, also, of the order to vacate a highway. "Where an abandonment of the prescriptive right acquired by the public to a highway is relied on, it must be clearly proven that all use of it as a public highway has ceased for a sufficient length of time to indicate the intention to abandon, and proof of transient or partial nonuser will not suffice." 194 Ill., 355.

And in order to establish a way by prescription, "the use of the way must have been adverse, exclusive, continuous, and uninterrupted for a period of twenty years, and with the knowledge of the owner of the land over which the way is claimed. To create the presumption of a grant of a right of way, the circumstances attending its use must be such as to make it appear that it was established for the benefit of the claimant, or that it was accompanied by a claim of right or by such acts as manifested an intention to enjoy it without regard to the wishes of the owner, and that it has not been regarded by the parties merely as a license, revocable at the pleasure of the owner." 196 Ill., 226.

In a subsequent case—*People ex rel. Yoder v. Highway Commission*, 188 Ill., 150—the supreme court again held that: "If an order made by highway commissioners is reversed by the three supervisors on appeal, the commissioners may institute proceedings for a writ of certiorari to have the action of the supervisors reviewed." 195 Ill., 43.

"If highway commissioners deny a petition to open a new road, one who owns land not adjoining the proposed road has no right of appeal, and an order of supervisors entered on his appeal is a nullity." 195 Ill., 43.

"The petition and order of the commissioners for laying out a highway determine its location, and the commissioners have no authority to open it except on the line established." 172 Ill., 415.

PARLIAMENTARY LAW.

OR, RULES OF ORDER FOR DELIBERATIVE ASSEMBLIES, ESPECIALLY USEFUL FOR TOWN MEETINGS AND BOARDS OF SUPERVISORS.

PARLIAMENTARY LAW consists of rules which are recognized as governing proceedings in deliberative assemblies. It is so called from the rules of order existing from long established usage in the Parliament of England. The Legislative Assemblies of the several States, and the legislative branch of the general government of the United States, being formed upon the principle of the English Parliament, have adopted the like rules for their government, and by general custom in this country, these rules are recognized in all deliberative assemblies. Legislative assemblies, however, for the purpose of certainty, generally adopt by express vote, the rules of parliamentary law, as expounded by some particular writer on the subject, qualified as circumstances may demand, by various rules of their own.

A deliberative assembly is a congregation or convention of persons for the consideration of matters in which all are concerned.

Public Meetings.—In many of the States of the Union, counties are divided into several districts called towns or townships, the inhabitants thereof becoming a body corporate. The law provides for stated meetings of the electors, called town meetings, for the consideration of town affairs. In the absence of any provision to the contrary, these assemblies conduct their proceedings according to the rules of parliamentary law.*

Public meetings by voluntary assent are of daily occurrence. These meetings are sometimes convened at the instance of committees appointed for that purpose; and are frequently convened at the request of citizens who desire such meeting, on public notice, either by hand-bill notices posted, or by notice in a newspaper.

Organization of Public Meetings.—The first business at a public meeting is its organization. This is effected by choosing a presiding officer to keep order, and a secretary to record the proceedings of the meeting, after which it is competent for the meeting to choose such other officers as may be deemed necessary. In case the meeting is composed of a very large number of persons, the presiding officer is called *president*; if not he is usually styled *chairman* of the meeting.

When the people have assembled, and the hour of meeting arrives, the meeting should be called to order. In case the meeting has been convened at the instance of a committee, the chairman or person first named on the committee should call the meeting to order. In case it was convened at the instance of citizens, the first named on the list should assume this duty, otherwise, the proper person for this purpose, would be the mayor of the city, or principal public officer, or most prominent person present.

The person calling the meeting to order should take such position in the room as to command the attention of the audience, and announce as follows: "Gentlemen, the hour at which this meeting is to convene having arrived, it is proposed that we proceed to organize; I therefore nominate Mr. A. B. as chairman." The nomination being seconded, he proceeds: "Gentlemen, those who are in favor of such nomination, will say 'aye';

*Boards of supervisors, as constituted by the laws of Illinois, are deliberative assemblies, and their proceedings are conducted according to general parliamentary rules.

those opposed will say 'no'." The vote being taken, if carried in the affirmative, he will say, "It is carried," or "It is agreed to; Mr. A. B. is chosen chairman of this meeting; will he please come forward and take the chair?"

If the meeting is deemed one of importance so that the position of chairman would be deemed one of considerable honor, it is customary for the presiding officer to return thanks to the meeting for the honor conferred; this he will do on taking the chair.

As every deliberative body should have a secretary, the chairman will say, "Gentlemen, the first business in order will be the election of a secretary." If no other person moves, the person who called the meeting to order should also nominate a secretary; but any person present may make such nomination.

The secretary being chosen, the further business will be directed by the meeting. If the meeting is called for some particular purpose, it is proper in selecting a chairman to choose some person best acquainted with the object of the meeting; if this is the case, the chairman should proceed after the election of secretary, and state the object of the meeting. If not, he should say, "The chair is not fully advised as to the object of this meeting. It will be proper that the object of the meeting be stated by some person to whom it is best known." It will be generally understood who this person is, and a motion may be made calling on him for that purpose, or he may be called out by several voices.

It will be proper for the meeting to choose one or more vice-presidents, and one or more assistant secretaries. This is done where the meeting is large—generally as a means of manifesting the importance of the occasion. They will also choose such committees as may be deemed necessary.

When an assembly is composed of delegates chosen by and representing others, the organization is, in the first instance, considered temporary, upon which measures are taken to ascertain who are members; this is usually done by the appointment of a committee to examine the credentials of those claiming to be members, and to report accordingly.

Until this is done there is a presumption that all present who assume to take part in the assembly, are entitled to do so, as it is supposed that no gentleman would be guilty of imposition in this respect. At the time of appointing the committee on credentials, it is customary also to appoint a committee to report the names of persons for permanent officers of the assembly or convention.

After the report of the committee on credentials is adopted, the assembly, on motion of some member, proceeds to the election of permanent officers. If the names of candidates have been recommended by a committee, the adoption of their report is regarded as making choice of the persons they have recommended. In the case of an assembly composed of delegates, unless it is an important occasion, it is not customary for the temporary chairman to return thanks to the convention, or to allude to the object of the meeting; he simply acts as moderator for the time being, for the purpose of organization.

It is proper that the permanent chairman, or president, on assuming his duties, should express his thanks for the honor conferred upon him, and state in general terms the object of convening the assembly.

In case the assembly or convention of delegates is small, it is customary to consider the temporary organization as permanent from the beginning.

When the organization of the meeting is completed by the election of officers, the chairman should announce, "The meeting is now fully organized, and ready to proceed to business." If no motion is made or business presented, it is proper for the chairman to say, "What is the pleasure

of the meeting?" And at any time when there is no business before the meeting, and there is no indication of presenting anything, the chairman should announce, "Gentlemen, there is no question before the meeting; what is your further pleasure?"

Manner of presenting business.—Every member of a deliberative body, in the absence of express rule to the contrary, has the right to present propositions for the action of the assembly. This is by a simple *motion* or by formal resolution. But where the object of the meeting is of a general nature, or where the subject does not seem to have been duly matured by any one present, it is customary to appoint a committee to prepare and report resolutions expressive of the sense of the meeting. When a member desires to present a proposition for the action of the assembly which is of importance, it should properly be reduced to writing; such propositions are called resolutions, and commence thus: "*Resolved*, That." But a matter of less importance may be by a mere motion, which need not be in writing unless for purpose of certainty in conveying the ideas of the mover.

Motions, and manner of proceeding.—A motion is simply a proposition of a member, as his individual sentiments. If the proposition offered prevails, it is then adopted as the conclusion or sense of the assembly.

But the proposition by a single member is not considered sufficient to claim attention from the assembly; it is therefore required that it shall be approved or *seconded* by one other member. This being done, the mover is entitled to have it put to the assembly. In general practice, however, all motions are presumed to be seconded, unless the point is made and found to be otherwise; in which case the presiding officer could not properly take notice of the motion.

In general no proposition or question can be acted upon except on *motion* of a member. The manner of proceeding is for the member to rise in his place, and say, "Mr. Chairman." Before he can proceed it is expected that he will have the permission, or as it is termed, "recognition of the chair." The chairman therefore responds: "The gentleman from," naming the district from which he is a delegate, or, "the gentleman on my right," or similar designations. The rule in deliberative assemblies being that no member shall be addressed or spoken of by his *name* where it can be avoided. The person offering the motion, being recognized by the chair, proceeds, "I move, sir, that," stating his motion. The member desiring to *second* the motion should rise and say, "I second the motion." Before any remarks upon the motion or proposition are in order, it must be stated by the chair. The chairman should say, "Gentlemen, it is moved that" (stating the substance of the motion). It is sometimes the practice for the chairman to say, "Gentlemen, you have heard the motion," and then proceed to put the question. But this is improper; a motion is not the property of the assembly, or, in other words, not a subject before them, until it is *stated* by the chairman.

When a motion is made and seconded, it becomes the property of the assembly, and cannot be withdrawn or modified by the mover except by leave of the assembly, on a motion made for that purpose.

After the chairman has stated a motion, which he may do without rising, if no member interposes, he should proceed promptly to put the question to the assembly; this he does by rising, when he will say, "Gentleman, those in favor of the motion will say *aye*"—"those opposed will say *no*." If it is decided in the affirmative, he will say, "The motion has prevailed," or, "It is carried." If it is decided in the negative, he will say, "The motion is lost," or, "It is decided in the negative."

After the vote has been declared by the presiding officer, it becomes

final. Sometimes, when the vote is nearly equal, it is difficult to determine which has prevailed. In such case the presiding officer should not hastily announce the vote. He should say, "The ayes *seem* to have it," or, "The noes *seem* to have it," as the vote may appear. If no member interposes, he may then proceed and declare the vote as it seems to him to be.

But if any member doubts the vote as the chairman states that it seems to be, he may rise and call for a division of the house. This may be done, as the call indicates, by dividing the members of the assembly—by having those who vote in the affirmative stand on one side of the room, and those in the negative stand on the opposite side; or by the "up-lifted hand"—the latter is the most usual—or simply by rising. In either case the chairman will direct the secretary to count the votes on each side, and report to him the result. The most usual and satisfactory course is by rising.

When a member calls for a division of the house, in the absence of any express rule made by the assembly on the subject, the presiding officer should proceed thus: "A division is called for; all those in favor of the motion will rise in their place, and stand until counted." When those in the affirmative are counted, and the number is reported to the chairman, he will announce the number, and say, "All those opposed to the motion will in like manner rise and stand until counted," which being done, the chairman announces the number, and declares the motion carried or lost according to the fact. It is perhaps the duty of the chairman to count the vote, but it is competent for him to direct the secretary to do so.

In case any member desires it, he may, at any time before the vote is declared by the chairman, call for the appointment of *tellers* to count and report the result of the vote, instead of leaving it to the chairman. This is done by the chairman on request of any member. It is customary to appoint one person from each side, or each party in the assembly. When a division is desired, it must be called for before the result has been finally declared by the chairman. After he has declared the vote, it is final, and a division cannot be called for.

MOTIONS IN GENERAL.—When a motion is made which the members are inclined to meet by a direct vote, on the merits, it is put to the assembly, either at once or after debate, and disposed of. But as propositions may strike different minds in different forms, it often occurs that the assembly, on motion of some member, will dispose of the question in some other manner; for this purpose there is a class of motions resorted to, called *subsidiary* motions, which may be entertained while the original or principal motion is pending, thus:

1. The assembly may desire to suppress the proposition, either for a time or altogether. The proper subsidiary motions for this purpose are, the *previous question* and *indefinite postponement*.

2. The assembly may be willing to consider the proposition, *but not at that time*. The usual motions in such case are, *postponement* to some future time, or to *lie on the table*.

3. The form in which the proposition is submitted may be considered defective in some particular, a correction of which may require more deliberate consideration than the assembly can conveniently bestow upon it. In such case the proper motion is to *refer* the proposition *to a committee*.

4. The proposition of itself may be satisfactory, if changed or qualified in some particular. In this case the proper motion is to *amend*.

The previous question.—The practice under this motion has not been uniform. In legislative assemblies it is generally regulated by rules prescribed; the usual course, however, in the absence of express rules, is this:

When a member desires a vote to be taken on a proposition without further debate or delay, he moves the *previous question*, this being seconded, the presiding officer says, "The previous question is moved. Shall the main question be now put? Those in favor will say 'aye,'—those opposed will say 'no.'" If carried in the affirmative, he will say, "The main question is ordered." In this case the assembly must come to a direct vote on the main question, without debate, and no motion can be entertained to dispose of the question in any other manner; the *main question* is the original proposition, with pending amendments if any, each of which is to be disposed of in its proper order.*

Indefinite postponement.—This motion is decided without debate. If in the affirmative it removes the question from before the assembly as effectually as if it had never been pending. A motion to postpone to a day beyond the sitting of the assembly is of the same effect as indefinite postponement.

Motion to postpone.—When it is desired to consider a proposition at some future day, the proper motion is to *postpone* or *lay on the table*. In either case the subject may be taken up subsequently by a vote of the assembly.

Motion to commit.—When it is desired to render a proposition more perfect before consideration, it is usually done by referring it to a committee. If there is a *standing* committee on that subject, the motion should be to refer to that committee. If not, then to a *select* committee. A motion to refer to a select committee, and a standing committee, may be made and pending at the same time; in which case, the latter motion takes precedence, and should be first put to the question. A part or the whole of a subject may be referred, or portions may be referred to several different committees.

MOTIONS TO AMEND.—Amending a proposition is either by adding words, or taking words from it, or by transposition of words. This is accomplished under different modes of proceeding. Under this head may be classed the following:

1. *Filling blanks.*—It often happens that propositions are introduced, leaving blanks to be filled by the assembly, either with times and numbers, or with provisions analogous to those of the proposition itself. In the latter case, blanks are filled in the same way that other amendments are made by the insertion of words. In the former, propositions to fill blanks are not considered as amendments to the question, but as original motions, to be made and decided before the principal question.

In case of blanks to be filled with *time* and *number*, motions may be made for that purpose, and the question taken on each by itself. Several motions for this purpose may be made and pending, before any of them are put to the question. The usual rule is to take the question, first, on the *highest number*, the *largest sum*, and the *longest time*.

2. *Striking out.*—If an amendment is proposed by striking out a paragraph or certain words, and it is rejected, it cannot be again moved to strike out the same words, nor a part of them; but it may be moved to strike out the same words with others, or to strike out a part of the same words with others, provided it becomes thereby a different proposition.

3. *Amendment by inserting.*—If an amendment is proposed by insert-

*If the motion for the previous question is lost, or decided in the negative, the general rule is stated to be, that the main question is taken out of the assembly for the day, so that there is then nothing before it to postpone, commit or amend. Cushing's Manual, § 175. But in Illinois the practice is that the main question is still pending as if no vote had been taken.

ing or adding a paragraph or words, and it is rejected, it cannot be again moved to insert the same words, or a part of them; but it may be moved to insert the same with others, or a part of the same words with others, if the coherence really make them different propositions.

4. *Striking out and inserting.*—This combination of propositions may be divided by a vote of the assembly. When the proposition is divided, the question is first to be taken on striking out; if that prevails, then on inserting; if the former is decided in the negative, the latter falls of course.

5. *Division of a proposition.*—Where a proposition is composed of two or more parts, which are susceptible of division into several questions, it is a compendious mode of amendment to divide the motion, if deemed advisable, into separate questions, to be separately voted upon. This may be done by order of the assembly, on motion, as in other cases.

The question as divided becomes a series of independent propositions. Assemblies sometimes provide by express rule for the division of a question on demand of a member.

6. *Amendment to an amendment.*—Custom or usage has established a rule whereby a proposition may be entertained to amend an amendment, but there can be no amendment of an amendment to an amendment.

OF THE ORDER AND SUCCESSION OF QUESTIONS.—It is a general rule that where a proposition is pending before a deliberative assembly no other can be entertained until that is disposed of, unless it be either, *first*, a privileged question; *secondly*, an incidental question; or, *thirdly*, a subsidiary question or motion.

1. *Privileged questions.*—Question of this nature are: 1. Motions to adjourn. 2. Motions or questions relating to the rights and privileges of the assembly, or of its members individually. 3. Motions for the orders of the day.

A motion to adjourn takes the place of all other questions whatever. It is not debatable, and ordinarily not susceptible of amendment.

A motion to adjourn to a time fixed can be amended, by offering some other time, and is debatable.

Questions of privilege come next in order, and take precedence of all other motions except that of adjournment. They are such as concern the rights and privileges of the assembly, or of its individual members.

Orders of the day come thirdly in succession, under the head of privileged questions. When the consideration of a subject has been assigned for a particular day, by an order of the assembly, the matter so assigned is called the order of the day for that day.

2. *Incidental questions.*—These are such as arise out of other questions, consequently are to be decided before those which give rise to them. Of this nature are: 1. Questions of order: 2. Motions for the reading of papers, etc.; 3. Leave to withdraw a motion; 4. Suspension of a rule; 5. Amendment of an amendment.

Questions of order are those questions raised by any member as to a breach of any rule occurring. It is the privilege of any member to raise questions of order in such cases.

Reading of papers brought before a deliberative assembly may be called for by any member who desires the reading.

Withdrawal of motions is allowed on the part of the mover, by leave of the assembly, which is to be obtained by a vote on motion as in other cases.

Suspension of a rule of the assembly may be granted by a vote thereof.

This is usually obtained at the instance of a member to consider a proposition which would otherwise not be in order.

Amendment of an amendment is allowable, as we have already seen; the amendment to the amendment must be first put.

3. *Subsidiary questions*.—These, as before remarked, are those which relate to a principal motion. Subsidiary motions in common use are: To lie on the table; the previous question; postponement, either indefinitely or to a day certain; commitment and amendment.

To lie on the table, is a motion usually resorted to in common practice when the assembly desire to put a proposition aside without giving any expression upon its merits. It is not debatable nor susceptible of amendment. It takes precedence of and supersedes all other subsidiary motions. If decided in the affirmative, all motions or propositions connected with the principal question, are removed with it from before the assembly, until taken up by a vote thereof.

The previous question stands in equal degree with all other subsidiary motions, except the motion to lie on the table.

The motion to postpone is either indefinite, or to a time certain; and in both these forms, may be amended;—in the former by fixing a time certain; in the latter by substituting one time for another. The latter case is treated like filling blanks.

A motion to commit, or recommit, may be amended by substitution of one kind of committee for another, or by enlarging or diminishing the number of the committee as proposed, or by instructions to the committee. It stands in the same degree with the previous question and postponement—but it takes precedence of a motion to amend.

A motion to amend stands in the same degree only with the previous question and indefinite postponement, and neither, if first moved, is superseded by the other. But it is liable to be superseded by a motion to postpone to a day certain. It may also be superseded by a motion to commit.

The following example is given to illustrate the successive order of questions: Suppose, *first*, a principal question is proposed, *second*, a motion is made to amend the principal question, *third*, a motion to commit, *fourth*, a question of order arises in the debate, which gives occasion to, *fifth*, a question of privilege, and *sixth*, a subsidiary motion, as to lie on the table. All these questions may be pending at the same time, and take rank in the order named. The regular course of proceeding requires the motion to lie on the table to be first put. If this is negatived, the question of privilege is then settled; after that comes the question of order, then the question of commitment; if that is negatived, the question of amendment is taken; and lastly, the main question.

Of reconsideration.—A deliberative assembly may reconsider a vote already passed, whether affirmatively or negatively. For this purpose a motion is made, as in other cases, that such a vote be reconsidered; if it prevails, the matter stands before the assembly in precisely the same state and condition as if the vote reconsidered had never been passed. In the absence of any express rule of the assembly, a motion to reconsider is made in the same manner as any other motion.

Of committees.—The business of deliberative assemblies is facilitated by aid of committees; they are of three kinds, *select committees*, *standing committees* and *committee of the whole*.

Select committees are those appointed to consider a particular subject.

Standing committees are those who are appointed to continue during the whole term of the assembly, to consider all matters of a certain character named during the time.

A *committee of the whole* is a committee comprising all the members of the assembly to consider any subject referred to them.

Select and standing committees, in the absence of any express rule or vote of the assembly, are appointed by the presiding officer. When a motion is made for the appointment of a committee, the motion usually includes the number of which it is to consist. If no vote is taken as to the manner of appointment, the presiding officer should proceed to appoint. It will be unnecessary for him to inquire of the assembly as to how they will have the appointment made; the fact that they have given no expression on the subject implies that the appointment shall be made by the chair.

The person first named on a committee is considered the chairman; but in the absence of any rule to the contrary, the committee may make choice of some other person as chairman, if they desire to do so.

When a committee have considered a proposition, they present the result to the assembly, which is called their *report*. It is usually in writing, and is announced to the assembly by the chairman, or some member of the committee selected for that purpose, who rising in his place, says, "Mr. President" [*or Mr. Chairman, as the case may be*], "The committee to whom was referred the subject "of [*stating the matter referred*], have had the same under consideration, and have "instructed me to report that "[*here follows the report*].

After the report is made, the proper motion is, on the reception of the report; but in practice the report is received without such motion, unless objection is made, in which case a formal vote is necessary. After the report is received, the committee are discharged without any action of the assembly.

The report thereupon becomes the property of the assembly, and the question recurs on its adoption. The presiding officer will proceed and so state the question, without any formal motion being made.

After a report is adopted, the recommendations of the committee become the sense of the assembly.

CONCLUSION.—The foregoing is a brief summary of the general principles of parliamentary law for the regulation of proceedings in deliberative assemblies. Limited space does not admit of an extended treatise on the subject; but sufficient has doubtless been given for ordinary purposes.

In conducting proceedings in deliberative assemblies, much depends upon the presiding officer. According to the popular idea of such a functionary, he becomes little more than a graven image, or fixed statue, when in fact he should be the most active man in the assembly. He should have his attention in all directions as much as possible, at the same time, and be quick to recognize any member who rises and addresses him. As soon as a motion is offered he should proceed promptly, without hesitation or delay, and state it, in a full and clear voice. If no one rises to speak to it, he should proceed just as promptly to put the motion. It is no part of his duty to invite debate.

An example of promptness and diligence on the part of the presiding officer gives spirit to the assembly, and business is conducted with more dispatch and greater satisfaction.

INDEX.

ANIMALS.

	Page
DOG AND SHEEP ACT.....	416
Assessors to make list.....	416
License fee	416
License fund	417
Payment not to bar action, when..	417
Proof of damages—Proceedings be- fore supervisor—Record to be kept—When owner solvent.....	418
Form of Affidavit by Owner of Sheep	419
Witness fees—Repeal	419
Meaning of "Dog".....	419
Form of record to be kept by su- pervisor	419
IN RELATION TO DOMESTIC ANIMALS	420
Unlawful to run at large.....	420
What deemed a running at large.	420
Pound—Poundmaster—Fees—Duties	420
Poundmaster to enforce Act—Pen- alty	421
What counties or townships not af- fected by this Act.....	421
Repeal	421
ESTRAYS	421
When estrays may be taken up....	421
Who may not take up estrays.....	422
Not to use before advertising—Milk	422
Several estrays	422
Notice of taking up.....	422
Recording notice with town clerk.	422
Form of notice of taking up estray by householder	422
DISEASES AMONG SWINE.....	423
Suffering swine to run at large— Penalty	423
Hog Cholera—Duty of owner.....	423
Conveying diseased swine unlawful.	423
Penalty	423
DOGS	424
Chasing sheep—Owner liable.....	424
When a dog may be killed.....	424
ANIMALS AND BIRD FERAЕ NATURAE	424
When made personal property.....	424
BOUNTY FOR KILLING CROWS, ETC.	425
Bounty on crows and crows' eggs— County board may allow bounty.	425
Proof of Killing—Certificate of clerk	425
Form of Affidavit of Applicant tak- ing eggs of crows.....	425
Payment of bounties	426
Certificate of County Clerk for bounty for taking crows' eggs from nests	426
Form of Affidavit of Applicant for Bounty for Killing Crows.....	426
Certificate to County Clerk for Bounty for Killing Crows.....	426

ANIMALS—Continued.

	Page
BOUNTY FOR KILLING GROUND HOGS	427
Bounty on Ground Hogs—County board may allow bounty.....	427
Proof of Killing—Certificate of clerk	427
Certificate to the County Clerk for Bounty for Killing Ground Hogs.	427
Payment of bounties.....	428
Form of Ground Hog Bounty Affi- davit	428

APPENDIX 786

BRIDGES.

See Roads and Bridges.

COUNTIES.

BOUNDARIES AND JURISDIC- TION	696
Boundaries	696
Jurisdiction over rivers.....	696
Jurisdiction over Lake Michigan...	696
ALTERATION OF COUNTY LINES	696
Petition to county board—Election ordered	696
Notice of election	697
Form of ballots—Effect of vote....	697
Restriction	697
Adjustment of debts.....	697
When territory released.....	698
When elections at discretion of county board	698
NEW COUNTIES	698
Petition to county board—Election.	699
Certificate of result to Secretary of State—Notice to Governor—Elec- tion, etc.....	699
Justices, etc., continued in office..	700
Canvass and return of votes.....	700
Oath of office—Organized—Circuit court	700
Transfer of suits, etc., lien of judgments, etc.	700
Adjustment of property and debts.	700
Commissioner to copy records—Ap- pointment	701
Duty of such commissioner.....	701
Further duties—Evidence	701
Fixing County Seat	702
OF THE POWERS AND DUTIES OF COUNTIES AND COUNTY BOARDS	702
Corporate name of county.....	702
By whom corporate powers exer- cised	703
Powers of county.....	703
Powers of county boards.....	704
Duties of county board.....	704
Raising tax in addition to Consti- tutional limit	706
Issuing bonds and raising tax may be included	707

COUNTIES—Continued.

	Page
Former deed, etc., confirmed.....	707
Contracts, etc.—Rights of county..	707
Suits—how prosecuted	707
Venue of suits by or against county	708
Jurors and witnesses.....	708
Duty of county board to prosecute and defend suit.....	708
How judgment against county paid	708
Auditing claims against county— Appeal	709
Summons	709
Transcript—Filing same	709
Form of affidavit of correctness of claim	709
Time of fixing compensation of county officers	710
Funds kept separate.....	710
Form of appeal bond to Circuit Court in appeal from decision of county board.....	710
Issuing county bonds.....	711
Neglect of duty.....	711
PROVISIONS SPECIALLY AP- PLICABLE TO THE BOARD OF COUNTY COMMISSIONERS IN COUNTIES NOT UNDER TOWNSHIP ORGANIZATION...	712
Commission—Oath	712
Meetings	712
Chairman	712
Quorum—Chairman pro tem.....	712
County board successor to county court	712
Supervision of highways, etc.....	713
Administering oaths	713
Acts legalized	713
PROVISIONS SPECIALLY AP- PLICABLE TO THE BOARD OF SUPERVISORS IN COUN- TIES UNDER TOWNSHIP OR- GANIZATION	713
Annual and regular meetings.....	713
Special meetings	713
Organization of county board.....	714
Certificates of election.....	714
Quorum—Majority vote	714
Form of report of committee.....	714
Open doors	715
Administering oaths	715
Appropriations for roads and bridges	715
Boundaries of towns—New towns, etc.	715
Naming towns	715
Committee to approve official bonds	716
SPECIAL PROVISIONS APPLI- CABLE TO THE BOARD OF COUNTY COMMISSIONERS OF COOK COUNTY	716
Fifteen county commissioners.....	716
President of board.....	716
Vacancy in office of president.....	717
Terms of office.....	717
Repeal	717
Powers and duties—Meetings...	717-729
APPOINTMENT OF PHYSICIAN, ETC., FOR COUNTY.....	729

COUNTIES—Continued.

	Page
Appointments, etc., of physicians, etc., to be under provisions of section 61	729
County clerk, clerk of the board and ex-officio comptroller.....	730
Powers and duty.....	730
Office of auditor created	732
Uniform system of books of account in county offices.....	732
Auditor to report to county board..	732
Access to books.....	733
Auditor may employ assistants....	733
UNITING COUNTIES	733
Uniting counties—Petition—Notice of election	734
Designation, etc.	734
Form of ballot.....	734
Effect of vote	734
Canvassing votes	735
Returns—Proclamation by gover- nor	735
Officers to hold until expiration of term	735
Process, etc.	735
County judges — Disposition of causes	736
Sheriff of petitioning county.....	737
Coroner	737
County treasurer	738
State's attorney	738
Superintendent of schools.....	738
County board	739
Justices of the peace and con- stables	739
Death of officer of petitioning county	739
Town officers where counties under township organization, etc.....	740
Legislative and judicial apportion- ment to remain, etc.....	740
Transfer of causes.....	740
Debts, taxes, issuing bonds.....	741
BOUNTY DEBT	742
Counties may fund	742
Bond to refund tax paid.....	742
Tax to pay principal and interest ..	743
Bonds receivable for taxes.....	743
Bonds to show authority.....	743
REMOVAL OF OBSTRUCTIONS FROM WATER COURSES.....	743
Removal of obstructions from water courses	743
REMOVAL OF COUNTY SEATS..	743
Time of holding elections—Judges	744
Notice—Petition — Affidavit—Tra- verse of same.....	744
Hearing by county court.....	744
Petitioner to designate residence— Must be voter.....	745
Petition open to inspection.....	745
Contesting petition	745
Notice of filing petition.....	745
Hearing by court	746
Subpoenas	747
Precedence—Decision final	747
When circuit judge to attend....	747
Appointment of challengers—Their duties—Their votes	747
Voting	748

COUNTIES—Continued.

	Page
No registration required.....	748
Poll books to be kept.....	748
Canvass of votes—Return.....	748
Qualification of voters.....	748
Swearing in vote—Penalties.....	748
Evidence of voters of county.....	749
Contesting election	749
Canvass of returns	750
Effect of vote	750
Neglect of duty—Penalty.....	750
COUNTY COURT DEFINED.....	751
County court defined.....	751
SITES FOR COUNTY BUILDINGS	751
Purchase of site for court house..	751
When land owned by board of education	752
Condemnation of land.....	752
Damages to whom paid.....	752
Emergency	752
BOARDS OF HEALTH IN COUNTIES	753
How created—Powers and duties..	753
Powers of	754
Refusal to obey rule of—Penalty..	754
Record to be kept.....	754
Fines paid to the treasury of the county	754
Compensation of members of board	754
Repeal	754
ENABLING COUNTY BOARDS TO ISSUE BONDS FOR PURPOSE OF PAYING OUTSTANDING INDEBTEDNESS	755
Outstanding claim against county excess, etc.	755
Question of issuing bonds submitted	755
When special election held—Notice	755
Notices to be posted.....	756
Special elections conducted by whom	756
Form of vote	756
Bonds, how signed and countersigned	756
Bonds, when payable—Interest...	756
Sale of bonds	756
County clerk to give 15 days notice of time and place of receiving bids for	756
Publication of notice.....	756
Money for sale of bonds separate fund	757
Interest, how to be paid.....	757
Sinking fund for payment of principal	757
LEGALIZING COUNTY BONDS VOTED FOR COUNTY BUILDINGS	757
Legalizing county bonds voted for county buildings	757
BURIAL OF INDIGENT OR FRIENDLESS UNION SOLDIERS OR MARINES, ETC....	757
Appointment of person—Interment	757
Expenses of burial—Funeral.....	758
County to pay expenses.....	758
Repeal	758
MAY ERECT MONUMENTS OR MEMORIAL BUILDINGS IN HONOR OF THE SOLDIERS AND SAILORS	758

COUNTIES—Continued.

	Page
How propositions submitted to vote of people	758
CLASSIFICATION OF COUNTIES	759
Counties classified	759
RELIEF OF THE BLIND.....	760
County may contribute from charity fund toward support of blind person	760
What persons may receive aid....	760
Discretion of county commissioners	760
Who not entitled to receive aid under this Act.....	760
Official "examiner of the blind" to be appointed	761
Duty of examiner.....	761
Registration of applicants—Fees..	761
Affidavit of applicant for benefit..	761
Duty of county clerk.....	761
Registry and yearly certification by county clerk	761
Duty of supervisor or county commissioners to provide for payment	761
Penalty for false affidavit.....	762
COUNTY BOARDS — EMPLOYMENT OF STENOGRAPHERS..	762
Authority to employ and pay stenographers	762
Acts legalized	762
COUNTY BOARDS—FUNDS FOR COUNTY FAIR EXHIBITS.....	762
May appropriate funds for certain exhibits at county fair.....	762
COUNTY AUDITOR IN CERTAIN COUNTIES	763
County Auditor—Office created in certain counties	763
Term of office.....	763
Nomination and election.....	763
Qualification and oath.....	763
Vacancy, how filled.....	763
Compensation	763
Office room	763
Duties	763
Repeal	764
COUNTY BOARDS—FUNDS FOR FARMERS' INSTITUTES	764
Appropriations for county farmers' institutes	764
No appropriation for more than \$300	764
COURT HOUSES — LEASE OF SPACE	765
Authority of county board to lease space in court houses.....	765
Emergency	765
APPROPRIATIONS FOR SOIL AND CROP IMPROVEMENT ASSOCIATIONS	765
County boards empowered to appropriate funds for improvement of general agricultural conditions	765
Limitation of amount of appropriation	765
Report to county board.....	766
COUNTY CLERKS	766
Oath	766

COUNTIES—Continued.

	Page
Bond—Form	767
Commission	767
Office at court house.....	767
Seal	767
Deputies	767
Principal clerk responsible.....	767
Pro tem clerk in case of vacancy.	767
Custody of records.....	767
General duties	768
COUNTY TREASURER	769
Oath	769
Bond—Form of	769
Commission	770
Duties of treasurer.....	770
Accounts to be kept	770
Free to inspection.....	770
County orders countersigned, etc..	770
Record of.....	770
Orders to be filled up and author- ized	770
When money may be paid.....	770
Report to county board	771
Report to be filed—Free to inspec- tion	771
Account—Settlement	771
Half-yearly settlements	771
Examination under oath.....	771
Refusal to account	771
Neglect of duty—Penalty	772
Defaulter—Misconduct in office— Cause for removal.....	771

DRAINS AND DITCHES.

Commissioners of highways, drain- age commissioners and body politic	216
Town clerk; clerk of drainage com- missioners	216
Duties of clerk of drainage com- missioners	216
Drainage record to be kept.....	216
Supervisor of town to act as treas- urer of district	217
County treasurer, treasurer of spe- cial district	217
Bond of district treasurer.....	217
RIGHTS OF DRAINAGE.....	217
Land owners may drain in natural course	217
Form of District Drainage Treas- urer's bond	217
Form of consent of commissioners to extend drain	218
Land owners seeking to drain through land of others. proceed- ing to acquire right.....	218
Jurisdiction of justice.....	218
Summons and its service.....	218
Hearing; finding; judgment; dam- ages	219
Form of summons to extend drain.	219
Form of docket entry in case of constructing	220
Form of bond for costs in suit.....	221
Proceeding after judgment.....	220
Right of entry, and duty to repair.	221
Rights of drainage run with the land	221
Penalty, for unnecessary damage done	221
Prerequisite of suit; bond for costs and damages	221
Costs; witness fees.....	221
Plat of land to be drained to be filed	222

**DRAINS AND DITCHES—Con-
tinued.**

	Page
Dismissal of suit, when.....	222
Record of plat and papers on drain- age record	222
Willful injury to drain; penalty....	222
COMBINED DRAINAGE	223
Petition, for system of combined drainage	223
Form of petition for combined drainage	223
Town clerk to file petition.....	224
Town clerk to issue and file notice of filing	224
Form of schedule of land.....	224
Form of notice	225
Meeting of drainage commissioners	225
To ascertain as to jurisdiction....	225
Form of public notice of filing peti- tion	225
Form of affidavit as to signers of petition	226
Hearing on petition; adjournment..	226
Form of oath to witnesses.....	226
View of premises; survey and esti- mate	227
Form of finding by commissioners.	227
Employment of engineer	227
Adjourned meeting; proceedings at	228
Record of proceedings at first meet- ing	228
Judgment by commissioners.....	228
Form of record at first meeting....	229
Style of district, by numbers.....	229
Form of finding by commissioners on petition	229
Boundaries of district to be fixed by commissioners	229
Effect of organization of drainage district	230
Election held on the second Satur- day of March of each year.....	230
Election of commissioners.....	230
Who entitled to vote at said elec- tion	230
Commissioners to appoint treasurer	232
Form of record on first adjourned meeting	232
Form of finding by commissioners at second adjourned meeting....	232
Form of record of proceeding at second adjourned meeting.....	233
District organized; commissioners determine system	233
Tile drainage to be preferred.....	234
Engineer employed, when	234
Record of maps and papers in drainage record	234
Form of engineer's report of sur- vey, etc.	234
Right of way; how acquired.....	234
Right of way; effect of release of, and filing	234
Right of way; damages to some; equitable allowance to all own- ers	235
Form of agreement for right of way and release of damages....	235
Right of way; venire to assess damages	235
Right of way; proceeding by justice of peace	236
Notice to owners of assessment of damages	236
Form of notice of assessment of damages	236

**DRAINS AND DITCHES—Con-
tinued.**

	Page
Service of notice of assessment of damages	236
Form of request for jury, assessment of damages	236
Form of venire for jury, assessment of damages	237
Form of verdict of jury, assessment of damages	237
Form of docket entry of justice, assessment of damages.....	238
Form of certificate to transcript...	238
Right of way; challenges; trial....	237
Record of proceeding.....	239
SPECIAL ASSESSMENT	239
Special assessment for benefits by classification of lands.....	239
Form of assessment for benefits by classification of lands.....	239
Classification of land, how made...	240
Utilization of existing ditch.....	240
Allowance for use of existing ditch	240
Notice of meeting for classification of lands	240
Service and proof thereof.....	241
Form of such notice.....	241
Hearing objections to classification and correction	241
Appeal to county court.....	242
Form of order confirming assessment	242
Form of appeal bond	242
Special jury summoned to hear appeals	243
May appeal to circuit court.....	243
Proceeding on appeal.....	243
Resolution to raise sum required..	244
Form of special assessment tax list	244
APPEAL TO COUNTY COURT	245
Appeal to county court; by whom..	245
How tax may be paid.....	245
Tax, collection not delayed by appeal	245
Tax, may be payable by installments	245
Form of order to pay tax by installments	245
Tax list to be filed; copy to treasurer	246
Form of certificate to copy.....	246
District treasurer's bond.....	246
Form of treasurer's bond.....	246
Treasurer to keep account of moneys	246
Treasurer; receipts and payments by	246
Form of order on treasurer.....	247
Delinquent list—commissioners purchase	247
Form of delinquent list.....	247
Certificate to delinquent list.....	248
Collector's bond	248
Form of collector's bond.....	248
Collection after delinquent list returned	248
Letting contracts to construct drains, etc.	249
Notice of letting contract.....	249
Form of letting contract.....	250
Commissioners not to be interested in contracts	250
Credit to tax payer for work done.	250
Allowance for right of way to be paid before entry	250

**DRAINS AND DITCHES—Con-
tinued.**

	Page
Money received used to defend suits, etc.	250
GENERAL DUTIES OF COMMISSIONERS	251
Commissioners' right of entry to survey	251
Penalty for preventing entry to survey	251
Highway may be used, when.....	251
Assessment against public or railroad company	251
Form of notice to railroad co. to build bridge	252
Commissioners to make necessary bridges, etc.	252
Default of railroad to construct bridges, etc.	252
Repair and maintenance of drains, etc.	252
Proceedings	252-253
Enlargement of district.....	254
Sub-districts, formation and rights of	255-256
Penalty, for willful injury to drain	257
Form of complaint for injury to drain	257
Owner's liability for damages by animals	257
Commissioners' liability for failure to perform duty.....	258
Penalty for failure to perform duty	258
Annual report of commissioners and treasurer	258
Form of report of commissioners and treasurer	259
How drainage district may be dissolved	259
Assessments	259
UNION DISTRICTS	260
Constituted when district in more than one town.....	260
Petition filed with clerk of town with most land	260
Proceedings as for combined system	260
Form of notice of appointment of commissioners	262
SPECIAL DISTRICT	261
How formed	261
Petition to county court.....	261
Bond, conditions of.....	262
Style of district.....	262
Notice of hearing on petition.....	262
Service of notice.....	262
Hearing—finding	263
Judgment	263
Commissioners appointed by court.	263
Commissioners' powers to examine, survey and report.....	263
Organization of district; when....	264
Judgment entered	264
Corporate powers of commissioners	264
County clerk ex-officio clerk of commissioners	265
Notice to elect commissioners.....	265
Election of commissioners, when; how conducted; voters	265
Commissioner's term of office.....	265
Annual meeting; when held.....	265
Commissioner's oath	266
Commissioners appointed by court, when	266

DRAINS AND DITCHES—Con-
tinued.

	Page
Commissioner's qualifications	266
Commissioners to view lands; make survey, etc.	266
Commissioners employ engineer....	266
Maps, etc., of system recorded in drainage record	266
Right of way, how acquired	267
Right of way, assessment of dam- ages, etc.	267
Form of notice of assessment of damages	267
Service of notice of assessment of damages	267
Trials, challenge of jury, verdict..	268
Special assessment of benefits.....	269
Classification of lands for assess- ment	269
Notice for classification	269
Meeting for classification.....	269
Appeal from classification; how had and to whom.....	270
Classification confirmed; commis- sioners certify sum to be levied.	270
Commissioners make tax list.....	270
Appeal therefrom	270
Levy inadequate, additional levy..	271
May be ordered paid in install- ments	272
Record of assessment in drain record	271
Bonds or notes issued may be re- newed	273
Extension of time to pay assess- ments	273
Time to pay may be extended on petition	273
Bonds issued to be recorded; pay- ment also	274
Bonds to be registered by state auditor	274
Auditor certify registration to county clerk	275
County clerk enter on tax list....	275
State to be custodian of tax, to col- lect tax and apply fund.....	276
Commissioners file statement of notes and bonds issued.....	276
County clerk extend tax to meet...	276
County treasurer to be collector and treasurer of district	277
Bond of treasurer	277
Assessments lien on land; reme- dies	277
Compensation of officers	278
Fees, how paid	279
Construction of bridge over drain..	279
RIVER DISTRICTS	279
How organized; powers	279
DISTRICT BY USER.....	280
Adjoining owners liable for repairs, etc.	280
DISTRICT BY MUTUAL AGREE- MENT	280
Organized, how	280
Repealing clauses; saving clause..	281
DRAINS CONSTRUCTED BY LI- CENSE	282
By mutual benefit	283
Permission to connect with drain.	283
Drains—filling up—consent	283
Act, how construed—parol license.	283

DRAINS AND DITCHES—Con-
tinued.

	Page
DISTRICT MAY ISSUE BONDS..	284
Commissioners may issue bonds...	284
When bonds may issue	284
When bonds may be registered....	285
Duty of auditor.....	285
Amount which may be levied.....	285
State shall be custodian of the tax.	286
ABATEMENT OF ASSESSMENTS	286
What petition shall state.....	287
Publication notice of.....	287
Who may appear.....	287
COUNTY DITCHES TO DRAIN SWAMP LANDS	288-292
Public ditches or drains.....	288
Power of county board.....	288
Appointment of commissioners....	288
Commissioners to form districts..	288
Separate districts	289
Classification for taxation.....	289
Notice of classification	289
Review of classification.....	289
Meeting to hear objections.....	289
Finding of commissioners.....	290
Appeals from commissioners.....	290
Manner of appeal and to whom....	290
Power of board of appeal.....	290
Commissioners cause map to be made	291
Proceedings to be recorded.....	291
County board, appoint drainage commissioners	291
Corporate authority of district....	291
Rate of tax	291
Tax—how computed—separate fund	291
Contract with other counties.....	292
Purpose of act	292
DISSOLUTION OF DRAINAGE DISTRICTS	292
How dissolved	292
Sale of property of dissolved dis- trict	293
PROTECTION, MAINTENANCE AND REPAIR OF DRAINS AND DITCHES	293
To require all persons owning land to clean streams.....	293
Penalty for failure to comply with	294
Form of petition for dissolution of	293
FOR AGRICULTURAL AND SAN- ITARY PURPOSES	294
Repeal certain sections	294
Certain actions legalized.....	295
PUMPING PLANTS—CONSTRUC- TION, MAINTENANCE AND OPERATION	295
Validation of former proceedings..	298
Repeals Act of 1905—Rights saved	298
Emergency	298
Pumping plants in districts having combined system of drains.....	295
Petition to county clerk.....	296
Notice of hearing on petition.....	297
Hearing on petition	297
Acquisition of right of way.....	297
Special assessment to be made.....	297
Apportionment for maintenance....	297

DRAINS AND DITCHES—Continued.

	Page
TO ACQUIRE, MAINTAIN AND OPERATE DREDGE BOATS....	298
When commissioners may own and maintain dredge boats.....	298
Emergency	299
PAYMENT OF ASSESSMENTS IN DRAINAGE DISTRICTS	299
Petition—what it contains.....	299
Time and place of hearing petition.	300
Notice of filing petition.....	300
Evidence in support of petition....	300
Hearing—consent of owners of bonds and order	301
Effect of an assessment.....	301
Commissioners may borrow money, issue bonds, etc.....	301
Assessment roll	302
Treasurer to deliver release to owner	302
Release may be recorded.....	302
Emergency	302
MONEY TO BE REFUNDED.....	302
Taxes to be refunded.....	302
Refusal to refund	303
Emergency	303
TO LEGALIZE DRAINAGE DISTRICTS AND ASSESSMENT OF BENEFITS	303
Legalizing districts	303
Legalizing and remitting assessments	303
LEGALIZING DRAINAGE DISTRICTS	304
Certain districts legalized.....	304
Certain special assessments legalized	305
Drainage district may purchase at sale	305
Rights of as purchaser.....	305
Emergency	305
LEVEES	306
Drainage commissioners may contract with railroad companies and grant right of way.....	306
DRAINS, DITCHES AND LEVEES FOR AGRICULTURAL, SANITARY AND MINING PURPOSES	306
Drainage districts	308
Organizing drainage district.....	309
Petition to be filed in county court.	309
Proceedings	309
Notice of filing petition.....	310
Affidavit, where land owners are non-residents	310
Publication of notice	310
Jurisdiction of county court.....	310
Hearing of petition	311
Finding of court.....	311
Proceedings since May 20, 1907, declared valid	312
Commissioners—official oath	312
Chairman—secretary	312
Quorum	313
Commissioners to examine land—report	313
Dismissal of proceedings.....	314
Surveys—profiles, etc., to be made	314
Alteration of plans—boundaries....	314
Assessment of benefits	315

DRAINS AND DITCHES—Continued.

	Page
Filing report	316
Court fix day for hearing.....	316
Confirmation of report.....	316
Modification	316
Form of order	317
Appeal of writ of error.....	317
Referring report—adjournment ...	316
Order of confirmation.....	317
Commissioners to acquire right of way	318
Roll of assessment of benefits and damages	318
Filing of roll of assessments.....	318
Hearing before jury.....	319
Organization of jury	319
Examination of lands.....	319
Verdict of jury.....	320
Assessment for repairs	321
Assessment for benefits	322
Payment of assessment of benefits in installments	323
Annual amount of benefits due and payable on the first day of September annually	323
May borrow money	324
Notes or bonds bearing six per cent interest	324
Certified copy of assessment delivered to commissioners	325
Commissioners to have power to contract in the corporate name of district	325
Treasurer—bond	325
Duties—term of office—compensation for services.....	326
Interest on installments.....	326
Bond of commissioners	326
Notice of assessment	327
Delinquent assessment—collector ..	328
Act to be liberally construed.....	328
Payment before sale.....	329
Letting contracts	329
Commissioners to advertise for bids	329
Suits, money to be used under direction of court	330
Additional assessments	330
Commissioners may borrow money.	331
Payment of damages.....	332
Removal of commissioners.....	333
Vacancies	333
Commissioners' report to court....	333
Pay of commissioners and clerk...	333
Petition to be relieved of assessment	334
Commissioners may petition for abandonment before contract let.	335
Entry upon lands.....	336
Drainage and levee districts may be taken, etc.	337
Assessment book—drainage record.	337
Proceedings of meetings recorded.	338
Proceedings where costs do not exceed \$2,000.....	338
Proceedings before justice.....	339
Refusal of commissioner to perform duty	339
No second tax—upper ditch benefited by lower ditch.....	340
Corporate authorities assessed for benefits and damages.....	340
Proceedings	340-341
Commissioners to give notice to railroad company to construct or enlarge bridge or culvert, etc....	342
Meaning of the word ditch—what Act includes	342

DRAINS AND DITCHES—Continued.

	Page
Assessing lands benefited outside of district—proceedings	343
Constructing additional ditches—proceedings	344-345-346
When assessment invalid as to one or more tracts—proceedings....	347
Proceedings to make assessments valid	347
Appointment of commissioners.....	348
Commissioners' oath	349
Bonds—how attested	349
Certified statement thereon by clerk	349
When question of organizing drainage district may be submitted to vote	350
Election, canvass—returns	350
Penalty for injuring drain.....	351
Liable for damages for injuring drain	351
Act construed	351
Repeal	351
Emergency	352
Drainage districts under this Act declared legally organized.....	352
Credit on assessment for work.....	352
How commissioners may sell or lease land	352
Real estate, when and how sold....	353
To what this Act applies.....	353
Repeal—rights saved	353
Drainage districts formed by mutual agreement	353
Selection of three drainage commissioners	354
Repeal	414
Emergency	414

DRAINAGE.

ADJOINING DRAINAGE DISTRICTS—CONNECTION	355-360
Connection with adjoining district authorized	355
District benefited liable for portion of cost of work, etc.....	355
Contracts to adjust amounts to be paid by each district.....	356
Approval of contract by county court	356
Notices of hearing on approval of contract	356
Proceedings at hearing.....	357
Decision or judgment of court may be reviewed	357
Duty of commissioners where no contract made or contract disapproved	357
Summons against district benefited	357
Where heard	357
Practice as in cases at common law	357
Court to determine sum and render judgment	357
What petitioning district need not prove	358
Set off by defendant.....	358
Report of annual benefits to court	358
Hearing set by the court.....	358
Summons	358
Practice same as in common law cases	358
Court to determine amount of annual benefits	358
Judgment	359

DRAINAGE—Continued.

	Page
Order for collection of annual benefits from land owners.....	359
Payment of judgment.....	359
Suit against corporate authorities.	359
Trial by jury	359
Venire	359
Limitation of action or pleading...	359
Repeals Act of 1903—Rights saved	359
Invalid portion not to affect valid portion	360
ADJOINING DRAINAGE DISTRICTS—JOINT WORKS	360-362
Joint systems authorized.....	360
Contract in writing.....	360
Petition to county court for approval of contract.....	361
Notice of hearing	361
Hearing on contract.....	361
Measure of liability	361
Subsequent contract	361
Appeal to Supreme Court.....	362

ELECTIONS.

ELECTORS OF PRESIDENT AND VICE-PRESIDENT OF UNITED STATES	597
For presidential electors, when held	597
Canvass—returns—tie, how decided.	597
Result published, etc.....	598
Governor to give certificate of....	598
Meeting of electors, mileage.....	598
Vacancy, how filled.....	598
TIME OF HOLDING ELECTIONS FOR CERTAIN OFFICERS.....	599
For representatives in congress, when held	599
Election of United States senator.	599
Governor, lieutenant governor, secretary of state, auditor and attorney general	599
Superintendent of public instruction	599
State treasurer	599
Judges of supreme court.....	600
Clerk of supreme court.....	600
Judges of circuit court.....	600
Judges of superior court of Cook county	600
Repeal—emergency	600
State senators	600
Members of the house of representatives	601
Of county judges and county clubs	601
Sheriffs and coroners.....	601
Clerks of the circuit court.....	601
Clerk of superior court of Cook county	601
Clerk of criminal court of Cook county	601
County treasurer ex-officio assessor.	602
County treasurers	602
County surveyors	602
County superintendents of schools.	602
State's attorneys	602
State board of equalization.....	602
Recorder of deeds in certain counties	603
County commissioners	603
ELECTION PRECINCTS	603
In counties under and not under township organization	603
May be changed, when.....	603

ELECTIONS—Continued

	Page
Change of election precincts.....	604
Dividing precincts into districts...	604
When county board fails to re- divide, etc.	604
All elections held at place desig- nated	604
Qualifications of judges.....	605
JUDGES AND CLERKS.....	605
Judges—How appointed in coun- ties not under township organ- ization	605
In counties under township organi- zation	607
Notice of appointment	608
Term of office.....	609
Vacancies filled	609
Clerks of election.....	609
OATHS OF JUDGES AND CLERKS OF ELECTION	609
Oath	609
By whom administered.....	609
BALLOT BOXES AND POLL BOOKS	610
Ballot boxes	610
Judges to keep ballot boxes, etc..	610
Blanks, poll books, etc.....	610
CONSTABLES APPOINTED TO ATTEND ELECTIONS—ORDER.	610
County board, or judges, may ap- point	610
Special constable	610
Compensation of constable.....	610
Suppressing riot, etc.—Arrest.....	611
NOTICE OF ELECTION.....	611
Manner of giving notice.....	611
Sheriff or supervisor to post.....	611
CONDUCTING ELECTIONS—RE- TURNS	612
Time of opening and closing polls	612
Proclamation	613
Ballot box publicly exhibited, etc. —Ballot box to be locked—Keys	613
Poll lists—How kept	613
Ballots	613
Form of ballot	613
Form of cumulative ballot	613
Manner of receiving and deposit- ing ballot	614
No adjournment or recess.....	614
Clerks of election.....	614
Irregular ballots	615
Ballots strung and returned.....	615
When destroyed	615
Examination of ballot in contested election	616
Form of return.	616
Returns to be made to county clerk	616
Canvass, etc.	617
Requirements as to lists forwarded to Secretary of State.....	617
Compensation of judges and clerks	618
Challengers	618
QUALIFICATION OF VOTERS....	618
Who may vote.....	618
Residence	619
When inmates of poor houses, asy- lums, etc., may vote.....	620
Inmates of Soldiers' and Sailors' homes	620

ELECTIONS—Continued

	Page
Affidavit of qualification	620
Affidavit of witness	621
Who may administer oath.....	621
Convicts—Disqualifications	621
CANVASSING VOTES—CERTIFI- CATE OF ELECTION.....	621
Canvassing votes—Abstracts	622
Certificates of election.....	623
Tie vote	624
Drawing lots—Certificates.....	624
Compensation of judges and clerks	624
Abstract sent to Secretary of State	624
How abstracts sent	625
Canvass by Secretary of State, etc.	625
Commission by the Governor.....	625
Proclamation	625
OFFENSES AND PENALTIES....	626
Liquor	626
False swearing	626
Illegal voting	626
Other offenses	627
Receiving, requesting, etc., bribe, etc.—Upon second offense.....	627
Disorderly conduct	628
Betting on election.....	628
Offenses of judge of election.....	629
When judge or clerk ascertains or discloses vote	630
When other person ascertains or discloses vote	630
Neglect of duty by clerk.....	630
Failure to deliver poll books, etc.	630
Neglect by county clerk.....	630
Fraud in canvassing, etc.....	631
Carrying away, defacing, etc., poll books, etc.	631
Refusal of supervisor, etc., to act —Penalty	631
CONTESTING ELECTIONS	631
When legislature to hear.....	632
Senators and representatives.....	632
By Circuit court	632
By Circuit courts, and in Cook county also by the Superior court	632
By County court	633
Election of state officers—Petition of contestant	633
Joint committee to take testi- mony	633
Powers of joint committee.....	633
Notice	633
Testimony	633
Report of committee—Hearing— Decision	633
Who may contest senator or rep- resentative	633
Notice of contest	634
Testimony—How taken	634
Power of officer taking testimony	634
Deposition, etc., to be sent to Sec- retary of State.....	634
Delivery of notice of contest, etc. —Duty of presiding officer.....	635
Rights of either house saved.....	635
Who may contest election of other officers	635
Contestant to file statement, etc...	635
Summons	635
Evidence	636
Trial	636
Other elections contested.....	636
When elector may defend for county	636
Judgment	636

ELECTIONS—Continued.

	Page
Tie	636
Certified copy of judgment.....	637
When election adjudged void.....	637
Appeal	637
RESIGNATIONS AND VACANCIES.	637
Of elective officers.....	637
When office becomes vacant.....	637
Who may determine when vacancy exists	638
Vacancy in office of Governor and Lieutenant Governor	638
Vacancy in other State offices....	638
Vacancy in office of Senator or Representative	638
Vacancy in office of Representatives in Congress	638
Vacancy in the office of United States Senator	639
Vacancy in office of Judges.....	639
Clerks of courts	639
County officers, precinct officers, etc.	639
To what elections this Act may apply	640
REGISTRATION OF ELECTORS.	640
Board of registration—Meeting—Register	641
Manner of making register, etc.—First meeting	641
New election districts	642
Revision register—Second meeting	643
Proceedings open—Corrections, etc.	643
Revising register—Addition of new names	643
Copies of register—Filing—Deliver to Judges—Voting, etc.	644
Entry on register by clerks.....	644
Non-registered voter—Penalty....	644
Poll lists and register to be filed..	645
Registers open to inspection.....	645
Compensation	645
Preserving order	646
Fraudulent registration, false swearing, etc.	646
Blanks to be furnished.....	646
Time Act takes effect.....	646
CONGRESSIONAL APPORTIONMENT	647
Apportions State into 25 congressional districts	647
Number of representatives in Congress—When elected	649
The words “Ward” or “Wards” in the City of Chicago defined...	649
Repeal	649
SENATORIAL AND REPRESENTATIVE APPORTIONMENTS	649-656
Apportions State into 51 senatorial districts	650
The words “ward,” “street,” “avenue” and “boulevard” in the City of Chicago, defined.....	657
Repeal	657
TO REGULATE THE MANNER OF HOLDING ELECTIONS....	657
Ballots printed at public expense..	658
Expense borne by cities, etc.....	658
Nomination of candidates.....	658
Caucus nominations—Certificate ..	659
Nomination certificates — Signatures	660

ELECTIONS—Continued.

	Page
Petitions for nomination	661
Form of petition for nomination for township officers.....	661
Nomination papers—Requisites ...	663
Certificates to be filed.....	663
Withdrawal of nomination.....	663
Form of withdrawal of candidate.	664
Death or declination of candidate —Vacancy	665
Certificates of nomination—Objections	665
Nomination to fill vacancy.....	666
Form of objection to nomination.	666
Pasters—Stamping on ballots.....	667
Notice to county clerk.....	667
Form of notice to objections to nomination	667
Ballot—What to contain—Form of.	668
Printing of—By what officers.....	669
Vote on constitutional amendment	670
Ballots for representatives in General Assembly	671
How counted	671
Form of requisition for additional ballots	671
Repeal	672
Printed instructions for voters....	672
Instructions, cards and specimen ballots to be posted.....	672
List of nominations to be published	673
Judges to have charge of ballots.	673
Booths at polling places—To be private	673
Stationery, etc.	673
Manner of voting—Checking on register list	674
Manner of preparing ballots.....	675
Assistance to illiterate voter.....	676
Absence for voting purposes.....	676
Employer preventing—Penalty ...	676
Ballots not counted.....	677
Spoiled ballots	677
Canvass of votes—Proclamation..	677
Ballots objected to—“Defective”...	677
Ballots destroyed	677
Electioneering at polls prohibited..	678
Penalty	678
Unlawful exhibition of ballots....	678
False statement—Penalty	678
Destroying poster lists, etc.; penalty	678
Destroying, etc., certificate of nomination	679
Spurious ballots—Penalty	679
Neglect of officer to perform duties	679
Published in pamphlet form.....	679
Time polls to be kept open.....	679
Repeal of prior Acts—Effect on penalties	680
Newspaper publication of this law.	680
QUESTIONS OF PUBLIC POLICY.	681
Question to be printed on separate ballot—Form	681
Petition to submit at election.....	681
Duty of election officers.....	681
DISPENSING WITH INDIVIDUAL TALLY MARKS IN COUNTING “STRAIGHT TICKETS”	682
Dispensing with individual marks in counting “straight tickets”..	682
Repeal	683
WOMEN MAY VOTE FOR SCHOOL OFFICERS	684
Women may vote for school officers	684

ELECTIONS—Continued.

	Page
Ballots—What to contain.....	684
Ballots—How deposited	684
WOMEN MAY VOTE FOR PRESIDENTIAL ELECTORS AND CERTAIN OTHER OFFICERS, ETC.	685
What officers and propositions in State, Cities, Villages and Towns	685
What township officers, etc.....	685
Separate ballot boxes and ballots..	685
Canvass	685
Registration	685
ANTI-SALOON TERRITORY	686
Words and phrases defined.....	687
Petition—When and where filed—Signatures	687
Vote operative 30 days after election	688
Form of petition—How signed.....	688
Sworn statement—Filing certificate—Penalty	689
Notice of submission of proposition	689
Publication of	689
Ballot — Forms of — Canvass — Watchers	689
Result of vote—Evidence	690
Anti-Saloon territory defined.....	690
Conflicting ordinances suspended...	690
Submission of proposition of continuance	691
Separate ballots in districts	691
What constitutes bar to submission of proposition	691
Unlawful to sell or issue license to sell intoxicating liquor.....	692
Unlawful selling defined	692
Penalty	692
Place where liquor is sold declared a common nuisance	693
Offenses and penalties	693
Where offenses may be prosecuted	694
Prosecution—Form of	694
Sale of liquor by druggists.....	694
Record to be kept.....	694
When sales by manufacturer exempt	695
Petition for contesting validity of election	695
Procedure	695

FENCES.

Assessor and commissioners of highways viewers of.....	363
In counties not under township organization, viewers how appointed	363
Term of office	363
What considered a legal fence....	363
Electors may determine what is lawful	364
Division fence—removal of—notice.	364
Form of agreement to divide and maintain division	364
When owner to contribute to value.	365
Value determined by viewers.....	367
Form of notice to adjoining owner to choose viewer	367
Neglect to rebuild or repair, viewers to examine	368
Form of viewers' determination as to value of division.....	367
Form of notice to owner who neglects to repair	368

FENCES—Continued.

	Page
Disputes of owners settled by viewers	369
Form of notice for examination of fence	368
Form of direction by viewers to build	369
Viewers—how chosen	370
Form of notice to choose.....	371
Form of submission of dispute....	372
Duties of viewers	371
Decision of two, final.....	371
Form of decision by viewers in relation to	372
Reduce to writing, file with town clerk	372
Form of decision where another selected	373
Neglect to repair or build after notice—damages	373
Form of notice to contribute to erection or repair	374
Form of appraisal of damages, neglect to repair, etc.....	374
When fences destroyed, etc., notice to repair	374
Form of notice to make or repair..	375
Neglect or refusal to repair.....	375
Removal of—one year's notice....	375
When owner may not remove.....	375
Form of notice of intention to remove	375
Removal without notice—liability..	376
Mistake in locating—remedy.....	376
When not to be removed.....	376
Fees of viewers of.....	377
Damages for breaking into.....	377
Animals breaking into enclosure.	377
Owner may keep until, etc.....	377
Rescuing animals breaking into—Penalty	377
HEDGE FENCES	379
Hedge fences—owner to trim....	379
Not exceed five feet height.....	379
Not to apply to hedge protecting orchard or building	379
May build for windbreak.....	379
Application to build for windbreak—Form	379
Form of consent to grow for windbreak	381
Failure to comply with act—Penalty	380
Owner non-resident—Commissioners to trim	380
Cost of trimming returned as delinquent tax	380

Fence Viewers.

In township, assessor and commissioners are	363
In counties not under township organization county board to choose	363
Value of fences ascertained by....	367
Give notice to repair or build fence	368
Form of determination as to value of fence	367
Form of notice to owner who neglects to repair, etc.....	368
Disputes settled by.....	369
Form of notice for examination of fence	368
Form of direction by, to build or repair	369
How chosen—Notice, etc.....	370

FENCES—Continued.

	Page
In case of disagreement—Choose a third	371
Decision of, to be in writing.....	371
Form of decision by.....	372
Form of appraisal of damages by, etc.	372
May examine witnesses, etc.....	376
Power to issue subpoenas—Admin- ister oath	376
Form of subpoena for witness.....	376
Fees of	377
Trespass—Damages for	377

Fencing Railroads.

Fencing track	382
Right of way clear of combustibles.	384
Allowing animals on right of way —Penalty	385
Neglect or refusal to build fence, etc.	385
Form of notice to build or repair fence, etc.	386
Service of, how made.....	386
Adjoining owner may build and recover	386
Damages may be recovered of rail- road, when	386
Boards at crossings	386
Bell and whistle—Crossings	387
Killing stock—Frightening team..	387
Starting train without signal.....	387
Approaches at crossings.....	387
Neglect to make, etc., crossings— Notice	388
When company neglects, authori- ties to construct, etc.....	388
Company to pay expenses and \$100.	388
Form of notice by commissioners of highway to railroad agent for repair of crossing	388
Not to obstruct highway.....	389
Penalty	389
Flagmen—Shelter	389
Penalties	390
Corporation defined	390
Street railroads	390

GENERAL NOTES.....773

HIGHWAYS.

See Roads and Briges.

PARLIAMENTARY LAW...786

PAUPERS.

How and by whom supported.....	392
When so from intemperance.....	392
Who first called on to support.....	392
Counties can sue	392
Married females not liable for sup- port	392
Failure to support, complaint by State's Attorney	392
Overseer may, make complaint....	392
Notice to be given defendant.....	393
Trial—Judgment	393
Court may direct contribution....	393
Partial support—Court may direct.	393
Time of maintenance and payment	393
Order of court changed from time to time	446
How payments enforced	394
When towns to support	395

PAUPERS—Continued.

	Page
When not resident of county—Re- moval	395
Form of notice to remove non- resident	395
Costs, to whom adjudged	394
Bringing into county—Penalty....	394
When county to support poor.....	394
Term residence defined	396
Supervisor overseer ex-officio	396
To execute bond	396
Overseer in counties not under township organization	397
Duties of overseers	397
May let out support of.....	397
Form of contract for support of...	398
Form of approval of contract.....	398
Person to whom let to give bond..	398
Temporary relief, when given....	399
Form of bond by contractor to sup- port poor	399
Aid, when given to non-resident poor—Burial	399
Overseer makes report	400
When supported by town, report to town auditors	400
Powers of county board over poor.	400
Overseer of to keep accurate ac- count, etc.	401
File copy of account with county clerk	401
County agent to keep like account, etc.	402
Keeper of poor house keep account, etc.	402
Neglect of overseer, etc., to make reports—Penalty	402
Poor to be kept at poor house.....	402
Township support—How abandoned	402
Residence of	403
County board may adopt separate support	404
May fix rate each town shall pay..	404
Town may have supported in poor house	404
When town fails to support.....	404
County agent to report.....	404
Tuition of children of.....	404
Children on poor farms.....	405
Home for such children.....	405
Jurisdiction of county judge.....	405

REVENUE.

PROPERTY LIABLE TO TAX- ATION	429
Taxable property	429
PROPERTY EXEMPT FROM TAXATION	430
Exempt property	430
RULES FOR VALUING PER- SONAL PROPERTY	433
Personal property	433
RULES FOR VALUING REAL ESTATE	435
Real property	435
PERSONAL PROPERTY—WHEN LISTED	435
Time to list	435
WHO SHALL LIST AND WHAT LISTED	435
Manner of listing	435

REVENUE—Continued.

	Page
WHERE LISTED AND ASSESSED, AND WHAT HELD TO BE PERSONAL PROPERTY—MANNER OF LISTING.....	437
Where personal property listed...	437
Farm property—Owner not residing on farm	437
Of manufactures in hands of agent	438
Purchaser's interest in exempted lands, personalty	439
In transitu	439
Nursery stock	439
Personal property of banks and others	439
Repeal	440
The personal property of gas and coke companies	440
The personal property of street railroad, plank road, gravel road, turnpike or bridge companies..	440
The horses, stages and other personal property of stage companies	440
The personal property of express or transportation companies.....	440
Consignees only his interest.....	440
Listing on behalf of others.....	440
Interest on bonds	441
Money secured by deed.....	441
Removing—Where owner assessed.	441
How place of listing fixed.....	441
Schedule	441
FORM OF SCHEDULE	442
Schedule	442
When assesor may examine under oath and list property.....	444
RULES FOR LISTING CREDITS.	444
What debts deducted from credits	444
What debts not deducted.....	444
Deductions verified by oath—Perjury—Fines—Statements	445
RULES FOR LISTING STOCK OF MUTUAL BUILDING, LOAN AND HOMESTEAD ASSOCIATIONS	445
Shares of stock—When and how assessed	445
Non-resident stockholders	446
Mode of determining value of stock	446
Shares of stock—How assessed—Emergency	446
RULES FOR LISTING THE PROPERTY AND BUSINESS OF BANKS, BANKERS, BROKERS AND STOCK JOBBERS....	446
Banks, etc.—Rules for listing.....	446
PAWNBROKER	447
Who is a pawnbroker.....	447
LISTING CAPITAL STOCK OF CORPORATIONS AND FRANCHISES OF PERSONS	447
Rules for listing and valuing property of certain corporations.....	448
Schedule returned to county clerk.	449
Forwarded to auditor	449
State Board of Equalization to assess capital stock	449
Franchise to be listed and valued..	449
STATE AND NATIONAL BANKS.	449
How assessed and taxed	449

REVENUE—Continued.

	Page
List of stockholders to be kept etc.	450
Shares listed in names of owners.	450
Tax extended	450
How tax on shares collected—Lien.	450
Dividends to be held for taxes....	450
Shares sold	451
MANNER OF LISTING AND VALUING THE PROPERTY OF RAILROADS	451
Schedules	451
Time of filing schedule—Form of same	451
“Railroad track”—Description of.	452
How “railroad track” listed and assessed	452
“Rolling stock”—Schedule	453
How “rolling stock” listed and taxed	453
Personalty and real estate other than “rolling stock” and “railroad track” where listed.....	453
How such other personal and real property to be assessed	453
Railroad returns to auditor.....	454
Neglect to return	454
Schedules—Board to assess railroad property	455
Railroad tax book—Extending and collecting tax	455
Description of platted land	455
TELEGRAPH COMPANIES—RETURN	455
Schedule	456
Board of equalization to assess....	456
How tax collected	456
Office furniture, etc., how listed and assessed	456
PENALTY	456
False schedule, etc.....	456
Perjury	457
REAL PROPERTY—AS OF WHAT TIME LISTED—WHO LIABLE FOR TAX	457
Real property—Listed	457
Owner liable—When	457
Leasehold interest in exempted lands	457
When certain lands become taxable	457
SUBDIVIDING	458
Owner to plat—Record—Description	458
Owner neglecting, County clerk to cause plat, etc.....	458
HOW LISTED AS BETWEEN COUNTIES	459
In two counties	459
HOW LISTED AS BETWEEN TOWNS	459
In different towns	459
MAKING DELIVERY OF ASSESSMENT BOOKS AND BLANKS..	459
How books to be made.....	459
Books to be by townships.....	460
When separate books for cities, etc.	460
Lists compared	460
Books ready—When	460
Assessors to call for books.....	460
Other lands	460

REVENUE—Continued.

	Page
APPOINTMENT OF ASSESSORS AND DEPUTY ASSESSORS....	461
In counties not under township or- ganization	461
Deputies	461
OATH AND DUTIES OF AS- SESSORS — ASSESSMENT OF REAL AND PERSONAL PROP- ERTY	461
Oath	461
Failure to take oath—Vacancy...	462
How and when real estate assessed	462
Other lands added.....	462
How personal property assessed...	462
When owner, etc., sick or absent.	463
Examination under oath—Witness.	463
School district to be designated...	463
When property in several districts.	464
When assessor to fix value.....	464
Owner may require list of valua- tion	464
Assessor to use forms.....	464
REVIEW OF ASSESSMENT BY TOWN BOARD, IN COUNTIES UNDER TOWNSHIP ORGANI- ZATION	464
Review of assessment—Time—Pro- ceedings	464
Notice of meeting.....	465
Failure not to vitiate, except, etc.	465
RETURN OF ASSESSOR TO COUNTY CLERK	465
Assessor to add columns.....	465
Tabular statements	466
Return—Form	466
Schedules and statements deliv- ered, etc.	466
Books delivered to town clerk....	466
Review of assessment.....	467
PAY OF ASSESSORS AND DEP- UTY ASSESSORS	467
Compensation of assessors.....	467
Detailed account of time, etc.....	467
DUTIES OF CLERK ON RETURN OF ASSESSMENT BOOKS.....	467
Clerk to correct errors, etc.....	467
Further corrections	467
EQUALIZATION OF ASSESS- MENTS BY THE COUNTY BOARD	468
At July meeting.....	468
County board may complete equali- zation at subsequent meeting...	469
REPORT OF ASSESSMENT BY THE CLERK TO THE AUDITOR FOR EQUALIZATION	470
Clerk's report to auditor.....	470
When assessments not all in.....	471
STATE BOARD OF EQUALIZA- TION	471
Members	471
Election—Term of office.....	472
Vacancy, filled by the Governor...	472
Oath	472
Chairman—Secretary—Employes ..	472
Duties of secretary.....	472
Annual meeting of board.....	473

REVENUE—Continued.

	Page
Property to be classified.....	473
Rules for equalizing personal prop- erty	473
Board to assess capital stock of corporations, except, etc.....	474
Extension of tax.....	474
Board to assess "railroad track" and "rolling stock".....	474
Distribution of values.....	474
Extension of tax.....	474
Capital stock of railroads and telegraphs—Distribution of value —Extension of tax.....	474
Lands, how equalized.....	475
Combined table—Final examination	475
Failure to return assessments....	475
When equalization completed ...	475
Proceedings of board published, etc.	476
Rooms, fuel, etc.....	476
Compensation of members.....	476
RATES OF TAXATION.....	477
Computing rates.....	477
FOR STATE PURPOSES.....	477
How rate found, etc.....	477
State school tax.....	477
State revenues	478
FOR COUNTY PURPOSES.....	478
County board to determine.....	478
TOWNS, CITIES, ETC.....	479
Certificate of rates.....	479
COLLECTORS' BOOKS — EX- TENDING RATES	479
Collectors' books	479
How made as to townships, cities, etc.	480
Rates—How extended—Valuation..	480
Equalization	480
Rates—How extended.....	480
Extension of towns, cities, etc., taxes	481
State and other taxes.....	481
Forfeited property—Back taxes...	481
Statement to Auditor.....	481
State and county equalized rates stated	482
Collector's warrant—Direction to pay over	482
QUALIFICATION OF TOWN AND DISTRICT COLLECTORS	482
Bond—Oath	482
Bond and oath recorded.....	482
Lien of bond.....	483
DELIVERY OF COLLECTOR'S BOOKS—WARRANTS	484
When delivered	484
Collector's warrants	484
Distress for personal tax	484
How to pay over taxes collected.	484
County clerk's certificate to county collector	485
COLLECTION DISTRICT AND WHO COLLECTOR IN COUN- TIES NOT UNDER TOWNSHIP ORGANIZATION	485
County, a district—Sheriff collector	485
VACANCIES AND RESIGNATION	485
How vacancies filled.....	485

REVENUE—Continued.

	Page
Appointment not to exonerate former collector	485
Duty of appointee.....	486
Extension of time in such case...	486
COLLECTORS	486
Who collectors	486
Bond—Oath	486
Approved and Recorded.....	487
Lien	487
How otherwise approved.....	487
Approval of bonds by auditor.....	488
Discharge of sureties.....	488
When collector defaults.....	488
Death of collector.....	489
Deputy collectors	489
Warrants to deputy collectors....	489
MANNER IN WHICH TAXES ARE TO BE COLLECTED.....	490
Kind of money.....	490
How collection made.....	490
Distress for taxes.....	491
Sales of property distrained—Surplus	492
Removal within county.....	493
Fees on distraint.....	493
Removal from county.....	493
Collection after return of county collector	494
Payment on part of tract.....	494
Undivided interest	494
Entry of payment—Receipts—Evidence	494
Name, etc., of owner.....	494
SWORN STATEMENTS OF COLLECTIONS TO BE MADE—PAYMENTS	495
Thirty-day settlements with cities, etc.	495
Thirty-day settlements with county collector	495
Local taxes to be paid over, etc....	495
Final settlement for local taxes before return	495
Duplicate receipts	496
RETURN OF TOWN AND DISTRICT COLLECTORS TO THE COUNTY COLLECTOR	496
When return made.....	496
Form of return as to personal tax..	496
Credits, etc.	497
Form of return as to real estate..	497
To note what personal tax can be collected from real estate.....	498
Suit on bond.....	498
Satisfaction piece	498
Satisfaction piece may be recorded—Effect	498
Delinquent defined	498
RETURN OF DELINQUENT SPECIAL ASSESSMENT	499
To county collectors—His duties...	499
Transfer of amounts.....	499
Demand for assessment when tax paid	499
COUNTY COLLECTOR'S RECEIPTS—POWERS	499
Form of receipt.....	499
Powers to collect.....	499
ADVERTISEMENT FOR JUDGMENT AND SALE.....	500

REVENUE—Continued.

	Page
Advertisement	501
Proceedings against real estate for personal tax	502
Figures, etc., used—Advertisement, etc.	502
When application for judgment made, etc.	503
Copies of paper containing advertisement	504
Error in advertisement.....	504
Delinquent list—Form.....	504
Tax may be paid before sale.....	505
Payments reported—List corrected	505
JUDGMENT	506
Proceedings by court.....	506
Appeals	508
Proceedings in case of appeal....	509
SALES OF DELINQUENT LANDS.	509
Process for sale	510
County clerk to assist in sale....	510
Entry of sale—Redemption.....	510
County to furnish book.....	511
Forfeited tracts noted.....	511
Sale and redemption record.....	511
Manner of conducting sale.....	511
How sold	512
Forfeited to the state	512
Failure of collector to attend....	512
Failure of county clerk to attend.	513
Payment by purchaser.....	513
Certificate of purchase—Assignable	513
Exception	513
Index to tax sale books.....	513
CERTIFIED COPY OF SALE LISTS TO BE SENT TO AUDITOR	513
In twenty days after sale.....	514
REDEMPTION	514
Time of redemption—Amount.....	514
When purchaser suffers land to be sold again	515
Books, etc., evidence.....	516
Sales in error—Entry.....	516
Purchaser at erroneous sale paid back	516
Effect of receipt of redemption money	516
TAX DEEDS	517
Notice	517
Affidavit—Evidence—Perjury	518
Printer's fee	518
When entitled to deed.....	519
Deed may include several tracts...	519
Fee—Exception	519
Form of tax deed.....	520
Evidence recorded	520
Applies to former sales.....	520
Effect of deed as evidence—Repayment	520
When deed must be taken out....	521
FORFEITED PROPERTY	521
Redemption or purchase of forfeited property	522
Report and payment of money collected on forfeited land.....	522
Back tax added—Effect.....	523
Suit for tax on forfeited property.	523
FINAL SETTLEMENT OF COUNTY COLLECTOR	524
Statement to county clerk.....	524

REVENUE—Continued.

	Page
Credit on forfeited property.....	524
Printers' fee	524
Settlement with county board....	525
When collector to account with clerk	525
Clerk to certify to auditor.....	525
Clerk to certify to local authorities, etc.	525
Credits on final settlement.....	525
Examination of accounts, etc.....	525
Final order—Corrections, etc.....	525
PARTIAL SETTLEMENT OF COUNTY COLLECTORS	526
April statement to clerk.....	526
Clerk to notify auditor, etc., amount due them.....	526
April payment to state treasurer.	526
Effect of failure of collector to obtain judgment	526
April payment to local authorities.	527
To pay cities, etc., every ten days.	527
Failure to make report—Suit.....	527
Failure to account and pay over—Suit	527
FINAL SETTLEMENT OF THE COUNTY COLLECTOR FOR STATE TAXES	527
Manner of making settlement.....	527
Duplicate statement to auditor....	528
Over-payment refunded.....	528
How paid into treasury—Duplicate receipt	528
Interest on money due State.....	528
Auditor's certificate of settlement	529
Filing same	529
LIENS OF TAXES.....	529
Of tax on real estate.....	529
Tax on personalty.....	530
Real and personal tax	530
Lien in favor of agents, etc., for tax paid	531
WHO NOT ELIGIBLE AS BONDS-MAN	531
Certain officers	531
LIABILITY ON BONDS.....	531
Specified	531
SUITS AGAINST COLLECTORS..	531
Suit by auditor.....	531
Jurisdiction—power of court.....	532
Proceedings in suit on bond by others	532
When bond sued by city, town, etc.	532
Fees when state sues.....	532
SALE OF REAL ESTATE ON EXECUTION IN BEHALF OF THE STATE—REDEMPTION	533
Notice of levy given auditor.....	533
Auditor to purchase in.....	533
Redemption	533
Payment of money collected.....	533
When real property not redcedmed—Timber, etc.....	534
DOUBLE PAYMENT AND ASSESSMENT—REFUNDING	534
Payment by different claimants—Return, etc.	534
Double assessment or payment....	534
Refunding	534

REVENUE—Continued.

	Page
WHEN RECORDS ARE DESTROYED	535
New assessment	535
OTHER DUTIES OF AUDITOR...	535
When a locality does not pay its share of tax.....	535
Auditor may sell property bought in by State.....	536
Abstracts, United States, Canal and Illinois Central R. R. Lands....	537
Forms—Instructions—Opinion	537
Act published	537
Swamp lands	537
OMITTED PROPERTY—SAVING CLAUSES	538
When discovered listed, and tax added	538
Personal tax	538
Tax not collected added to subsequent year	538
Not prior to date of ownership...	538
Notice	538
Special assessment—Return limited	539
Failure to complete assessment in time not to vitiate.....	539
Informality not to vitiate.....	539
Failure to deliver tax books not to vitiate	539
Wrong name not to vitiate.....	539
WHO MAY ADMINISTER OATHS	539
Officers enumerated	539
PENALTIES OF OFFICERS.....	539
Delivering books before collector's bond filed	540
Collector—Neglect to obtain judgment, etc.	540
Failure to do any duty under this Act	540
Refusal by clerk, assessor or other officers to do duty.....	540
COUNTY TO FURNISH BOOKS AND BLANKS	541
Clerk to procure them.....	541
COUNTY FUNDS—MANNER OF KEEPING ACCOUNTS THERE-OF	541
By collector, etc.....	541
By clerk, etc.....	542
DEFINITIONS	542
Words and phrases.....	542
Power of county court, until, etc..	543
REPEALING CLAUSE	544
Acts repealed	544
FOR THE ASSESSMENT OF PROPERTY AND PROVIDING THE MEANS THEREFOR...544-569	
In counties not under township organization the county treasurer is ex-officio assessor.....	546
Compensation	546
In counties under township organization	546
Appointment of deputies.....	546
Compensation	547
In counties containing 125,000 or more inhabitants, a board of assessors	547

REVENUE—Continued.

	Page
Election of	547
Organization of board.....	547
Powers and duties of board.....	548
Deputy assessors, appointment....	548
Assessor and supervisor of assessments to give bonds.....	549
Official oath—Form of	549
Assessor, etc.—Penalty for neglect of duty.....	550
Board of assessors may appoint deputies	550
Term of office—Oath.....	550
Maps, purchase of.....	550
Property subject to assessment and taxation	550
Property to be listed April 1.....	551
How and by whom listed.....	551
Real property—When and how listed and assessed.....	551
County clerk to make up duplicate books of lands or lots to be assessed for taxes—When made in triplicate	551
Assessors to receive books and blanks on or before April 1.....	552
When the assessor shall assess property	552
Mode of assessment—Actual view.	552
List—When valuations and entries to be made in duplicate and when in triplicate books.....	553
Alteration—Subdivision	553
When lands change in value.....	553
Personal property—When and how valued	554
When and how personal property to be listed.....	554
To furnish printed blank schedule	554
Assessed value	554
How real and personal property shall be valued.....	555
State board of equalization.....	555
Schedule—Penalty for omission to make	555
Person refusing to sign and swear to schedule	556
Duty of assessor—Penalty.....	556
Township assessor—Return of assessment books—Affidavit	556
Authority of supervisor of assessments	556
In counties having a board of assessors—Revision of assessment.	556
Term of township assessor, etc....	557
Office of board of assessors to be kept open during business hours	557
To furnish information to Board of Review, etc.....	557
Changes and alterations in assessment	557
Person entitled to copy of the description, schedule, etc.....	558
Schedules and statements of personal property—Custody of.....	558
Assessment lists to be published...	558
Board of review.....	558
Board of review—Appointment of —Vacancy—How filled	559
Compensation	559
Appointment of clerk.....	559
Who to constitute the board—Powers of	560
In counties of 125,000—Board of review of three persons.....	560
Election of —Organization and duties of	560
Form of oath to be taken.....	560

REVENUE—Continued.

	Page
Meeting of board to revise assessment	561
Powers and duties of.....	561
Powers and duties of board of review	561-565
Notices under this Act—How given	565
Board of review—When and how changes made upon assessment books	565
Form of affidavit to be attached to each of the assessment books.	565
Rules and regulations.....	566
Failure to complete assessment in time not to vitiate.....	566
Board of review—Meeting.....	566
Board of review may examine assessor as to how assessment was made	566
Delivery of books containing assessments	567
Conniving at any evasion of this Act—Penalty	567
Delivering false or fraudulent lists to assessor—Penalty	567
Duty of State's attorney to prosecute violators—Fees	568
Payment of salary of county assessor, etc.	568
Abstract of the assessment to be sent to auditor.....	568
County collector—Duplicate delinquent lists	568
When to be made and where to to be filed.....	568
County clerk to estimate and determine rate per cent.....	568
How to be determined	569
CONCERNING THE LEVY AND EXTENSION OF TAXES.....	569
Amount of tax authorized to be levied	569
Levy and extension of taxes.....	570
The State board of equalization —Time of meeting.....	72
The State board of equalization may raise or lower total assessed value	572
When books for the collection of taxes to be delivered to collector	572
A number of dates for the performance of Acts under the general revenue law changed.....	572
Board of assessors, duties and powers of—Penalties.....	574
Provisions of the general revenue Act applicable—To remain in force	574
Majority of board may act.....	574
In counties of 125,000 or over, power of township assessor.....	574
Provision in case any county shall hereafter come under the provisions of this Act.....	574
Repeal	574
AGRICULTURAL AND OTHER STATISTICS	575
Blanks and schedules	575
Assessors to collect and return statistics	575
Owners to fill schedules—Duty of assessors	575
Returns—How made	576
Emergency	576

REVENUE—Continued.

	Page
ASSESSMENT AND TAXATION OF BRIDGES ACROSS NAVIGABLE WATERS ON THE BORDERS OF THIS STATE....	576
Bridges on border of State—How assessed	576
Sale of bridge, etc., for tax.....	577
Repeal	577
Emergency	577
FOR STATE PURPOSES.....	577
Revenue fund for general State purposes and for State school purposes	578
Officers to compute rates per cent required	578
Auditor to certify.....	578
VALIDATING ACTS OF COUNTY BOARD HERETOFORE DONE IN DETERMINING AMOUNT OF TAXES TO BE RAISED FOR COUNTY PURPOSES	578
Validating Acts of county board, heretofore done in determining amount of taxes to be raised for county purposes	578
GIFTS, LEGACIES AND INHERITANCES	579
What property is subject to this Act	580
Rates of taxation prescribed—Exemptions	581
Appraisement of life interest.....	582
Accrued tax a lien on entire property	582
Bond for deferred payment.....	582
Interest on deferred payment of tax assessed	583
Bond of executors and others.....	583
Duties of executors and administrators	583
Liability of executors and others..	583
Payment of tax—How made by executor and others.....	584
Receipt of State treasurer.....	584
Executor and others to give information to county treasurer.....	584
Refunding tax retained by executor and others	584
Foreign executor transferring stocks	585
Notice to treasurer and attorney general	585
Liability of custodians	585
Refunding excess of tax by State treasurer	586
Appraisement of property—How made	586
Fees of county clerks.....	588
Inheritance tax attorney	588
Appointments authorized—Salary..	588
Fees generally	588
Appraiser—Penalty for receiving fee or reward	589
Jurisdiction of county court over property of new resident decedent	589
Failure to pay tax, proceedings in county court	590
State's attorney to enforce payment—Fees allowed	590
County judge and county clerk....	590
Quarterly statements to county treasurer	591

REVENUE—Continued.

	Page
State treasurer shall furnish book to county judge	591
Payment by county to State treasurer—Receipt	591
Report to auditor semi-annually...	591
Fees of county treasurer.....	591
Receipt from county treasurer....	591
Sealing and recording same.....	592
Liability to taxation—How determined	592
Appeal to supreme court.....	592
Continuation of lien—Limitation...	592
Highest rate in certain cases—Return of tax wrongfully imposed—Other provisions	593
Compounding of claims	593
Powers of State treasurer and attorney general	593
Guardian for infant.....	594
Bequests to hospitals, churches and other organizations exempted...	594
Transfer defined	594
Certified copies of papers to be furnished—Fees for same.....	594
Repeal	595
TO PROVIDE FOR CASUAL DEFICITS OR FAILURES IN REVENUES	595
Whenever casual deficits or failures in the revenues of the State occur	595
Loan—How made and when awarded	596
Bonds or certificates to be registered	596
Interest and principal.....	596
How paid—Appropriation	596
FUND FOR UNIVERSITY OF ILLINOIS	596
Annual tax levy for fund for use of University of Illinois.....	596
Disposition of fund.....	596

ROADS AND BRIDGES.

In general	127-215
DEFINITIONS.	
State road and bridge fund.....	127
State aid roads.....	127
STATE HIGHWAY DEPARTMENT	127-131
State highway department—Established	127
Offices	128
State highway commission—Office created	128
Oath—Bond	128
Salary—Expenses	128
General powers and duties.....	128-129
State highway engineer—Appointment	129
Oath—Bond	130
Powers and duties.....	130
Civil service	130
Removal from office—Vacancy....	130
Duties of present State highway commission terminated	131
COUNTY SUPERINTENDENTS OF HIGHWAYS	131-132
Appointment	131
Term of office—Salary.....	131

ROADS AND BRIDGES—Continued.

	Page
Removal	132
Powers and duties.....	132
Vacancy	132
STATE AID	133-144
State aid authorized.....	133
Highways to be designated by county boards	134
Total mileage of such highways...	134
Selection of highways to be indicated on map.....	134
When changes to be made on map by State highway commission...	134
Copy kept by county clerk.....	134
Map entered on official records—Changes	135
When county board fails to forward to State highway commission map within six months.....	135
Improvement of the system—How carried on	135
Where any county fails to provide amount equal to allotment by State highway commission.....	136
What considered sufficient acceptance of allotment to county.	136
Proceedings for construction of State Aid road	136
Preliminary resolution of county board	136
Examination of proposed highway.	137
Approval or disapproval by commission	137
Maps, plans, specifications and estimates	137
Eminent domain	137
Report to State Highway Commission and to the County Board....	138
Final resolution of State Highway Commission	138
Final resolution of County Board..	138
Final notice to State Highway Commission	139
Order of construction of State Aid roads	139
Contract for State Aid roads.....	139
Advertising for proposals.....	140
Proposals	140
Award of contract	141
Rejection of proposals.....	141
Form of contract	141
Bond of contractor.....	141
Payments on contracts.....	141
Acceptance of State Aid road when completed	141
Payments—How made—Effect of contract	142
Legal effect of contract.....	142
Roads constructed directly by the State	142
County Line roads.....	142
Repair and maintenance of State Aid roads	143
Public Utilities	143
BRIDGES AND IMPROVEMENTS CONSTRUCTED AND REPAIRED BY A COUNTY OR AT THE JOINT EXPENSE OF A COUNTY AND ANY TOWN OR ROAD DISTRICT THEREIN.	144-146
Bridges may be built by county..	144
Aid from county board.....	144
Letting contracts	145
Bridges built by two counties.....	145

ROADS AND BRIDGES—Continued.

	Page
Contracts by commissioners of adjoining counties	146
Approaches to bridges on or near county lines	146
Suit on joint contract.....	146
TOWN AND DISTRICT ORGANIZATION AND ADMINISTRATION FOR HIGHWAY PURPOSES	147-148
Town and district organization similar	147
Counties not under township organization	147
Division into districts	147
Counties already divided into districts	147
Counties not already so divided....	148
Corporate name of district.....	148
Corporate capacity of district....	148
Alteration of boundaries of road districts	148
HIGHWAY OFFICERS: ELECTION, POWERS, DUTIES AND COMPENSATION	148-158
Town and district road officers....	149
Commissioners, clerk and treasurer.	149
Who eligible	149
Elections—Provisions generally applicable	149
Counties operating under special act—Provisions applicable to first election	150
Notices of first election.....	150
Officers elected	150
Canvass of votes—Expense.....	151
Elections—Counties not under township organization—Provisions relating to the conduct thereof..	151
Annual election for district officers—Absence of officers.....	151
Notice of any annual or special election	151
District elections—How conducted.	151
Who entitled to vote.....	151
Canvass of votes—Certificate, poll list and ballots sealed and sent to district clerk	151
Canvass of returns—Notice of result of election to voters.....	151
Drawing lots in case of tie—Notice.	152
Notice of election to persons elected—Filing list of officers elected in office of County Clerk.....	152
Oath required	152
Neglect to take oath—Refusal to serve	152
When term of commissioner or clerk expires, successor to demand books, papers, etc.....	152
When office becomes vacant by resignation or otherwise—Demand, etc.	153
Delivering upon oath all records, books, etc.	153
Oath, by whom administered.....	153
Vacancies in office—Counties under township organization	153
Vacancies in office—Counties not under township organization....	153
Vacancy in office—How filled—Powers of persons appointed....	153
Certificate of appointment.....	153
Justice of peace may accept resignation of officer—Notice	153

**ROADS AND BRIDGES—Con-
tinued.**

	Page
Meetings of Highway Commissioners	154
General powers and duties of Highway Commissioners	154
Report	155
Duties of clerk	156
Recording orders of commissioners.	156
Books and stationery for office.	156
Copy of papers and transcripts from records—Evidence	156
Treasurer—Bond of	156
Itemized statement of receipts and disbursements	157
Compensation of commissioners.	157
Compensation of clerk.	157
Compensation of treasurer.	157
Compensation of justice of the peace	158
Offenses and penalties	158
THE RAISING OF REVENUE FOR HIGHWAY PURPOSES AND THE APPLICATION THEREOF	158-161
Poll tax	158
Constable's duty having execution for poll tax	159
General tax levy for road and bridge purposes	159
Copy of certificate to be preserved.	159
Damages for laying out roads, etc.—Tax levy for.	160
Tax rate—Extension and collection of taxes	160
Road damages—Orders out of tax to be levied.	161
Bonds may be issued by vote of special town or district meeting to build bridge, etc.	161
Road and bridge money—How paid.	161
PROVISIONS SPECIALLY APPLICABLE TO BRIDGES AND IMPROVEMENTS CONSTRUCTED OR REPAIRED AT THE JOINT EXPENSE OF TWO ADJOINING TOWNS OR DISTRICTS	162-164
Bridges built by two towns or districts	162
Contracts by commissioners of adjoining towns or districts	162
Approaches to bridges on or near town or district lines.	162
When commissioners of adjoining towns or districts refuse to enter into joint contract, bridge may be built and bonds issued by vote of town meeting or district election	163
Suit on joint contract.	164
THE LETTING OF CONTRACTS.	164-165
Contracts of single town or district	164
Contracts for improvements to be constructed by two towns or districts	164
Contractor to furnish bond.	165
When contracts made payable.	165
In letting contracts, etc., commissioners must not have any pecuniary interest	165
LAYING OUT, ALTERING, VACATING, WIDENING ROADS.	165-176
Width of roads	166

**ROADS AND BRIDGES—Con-
tinued.**

	Page
Reducing width of roads.	166
Altering, widening, vacating and laying out roads—Petition.	166
Hearing of petition—Notice—Preliminary order	166
Appeal	167
Surveys ordered	167
Damages to be determined.	168
Damages may be agreed upon.	168
Inducements may be offered.	168
Summoning jury to assess damages	169
Summons to owners.	169
Form of summons.	169
If owner infant, etc., how served.	169
Notice to non-resident owners—Continuance	170
Manner of selecting jury—Challenge	170
Oath to jury—Trial to be conducted as in other civil cases.	170
Trial—Verdict—Judgment damages—Benefits	170
Appeal	171
Costs of appeal—Appeal bond.	171
Final order of highway commissioners or county superintendent of highways	171
Appeal from final commissioners' order	172
Effect of final order.	172
Proceedings subsequent to final order	173
Records of town or district clerk—Evidence	173
Effect of same	173
Limitations of time to open.	173
Removal of fences—Notice.	173
Crops—Removal of	173
Private roads	174
Roads on town or district and county lines, etc.	174
Commissioners to allot all or part of road to each town or district.	175
Also to divide damages and expenses	175
Arbitration	175
Roads heretofore laid out on county or district or town lines.	175
State line roads.	175
Where road proposed across or alongside railroad—Notice.	175
Notices on railroad companies—How served	176
REPAIR AND MAINTENANCE OF ROADS AND BRIDGES.	176-177
How roads to be graded—Walk.	176
Penalty for driving on crossings.	176
Sidewalks in unincorporated villages	176
Road drags—Authority and use.	176
Obstruction drainage	177
Travel regulated	177
HARD ROADS	177-185
Petition for road.	178
Notice—Election—Vote—Rate per cent	178
Ballots	178
Duty of commissioners—Tax donations	178
Levy and collection of tax.	179
Borrowing money	179
Duty of treasurer.	181
Tax collector—Duty—Commission.	181
Surveys, estimates, etc.	181

ROADS AND BRIDGES—Continued.

	Page
Plans—Bids—Notice	181
Plans and specifications—What to contain	181
Commissioners—Opening bids.....	182
Failure to give bond.....	182
May reject bids.....	182
Estimate—Payment of contractor..	182
Record—Report—Settlement	183
Construction of road—Material....	183
Commissioners may take materials.	183
Compensation of commissioners and employes	183
Extension of road within city or village	184
Powers of county board.....	184
Ballots—Election—Tax	184
Roads to be free.....	184
Surplus fund	185
CERTAIN PROVISIONS APPLICABLE GENERALLY TO HIGHWAY OFFICIALS	185-188
Tile drains—Contract with owners.	185
Willow hedges—Public nuisance...	185
Carriages may be kept off highways—When	185
Commissioners may enter lands to open ditches, etc.	186
When owner will not consent—Proceedings—Material for constructing roads	186
Eminent domain	187
Authority to straighten water courses	187
Right of owner to make crossing—Costs	187
To keep down weeds	188
Penalty	188
Capacity of bridges and culverts...	188
Penalty	188
LAW OF THE ROAD—OFFENSES AND PENALTIES	188-195
Certain roads declared public highways	189
The term carriage	189
Notice against fast driving over bridge	189
Destroying or defacing guide boards, etc.	189
Depositing in road weeds, garbage, etc.	190
Injuring sidewalks, bridge, etc....	190
Turn to the right.....	190
Drunken driver—Penalty	190
Drunken driver, discharge of.....	190
Running horses, etc., on public roads	191
Team to be hitched.....	191
Owner liable for damages—Driver of stage, etc., guilty of misdemeanor	191
Injuring or obstructing roads, etc.	191
Obstructing person in highway ...	192
Itinerant camping on public highways unlawful	192
Penalty for violating this section..	192
Engines on public highways.....	193
When unlawful to blow whistle....	193
Penalty	193
Suits for recovery of fines or penalties under Act—How brought..	193
Application of fines	194
Fines—How disposed of.....	194
Restriction—Jurisdiction	194

ROADS AND BRIDGES—Continued.

	Page
SINGLE HIGHWAY COMMISSIONER SYSTEM	195-198
Provisions optional	195
Petitions for adoption—Election....	195
Notice of election	195
Ballots—Conduct of special election	196
Result of election.....	196
Election of commissioner—Tenure of office	196
Provisions specially applicable to—Counties not under township organization—Clerk	196
Conduct of elections	196
Powers, duties and compensation of highway commissioner	197
Compensation	197
Withdrawal from provisions of this article	197
Election of officers upon withdrawal from this article.....	198
ACT CONSTRUED — STATUTES REPEALED	198-200
Part invalid	198
Certain acts repealed.....	198
CONSTRUCTION OF BRIDGE PIERS	200
For construction of bridge pier booms over Illinois river.....	200
EXEMPTING CERTAIN BRIDGES FROM TAXATION	201
Penalty for violating rules of owner, etc.	201
MOTOR VEHICLE LAW.....	202-215
Term "Motor Vehicle" defined.....	202
Registration by owners of motor vehicles and motor bicycles.....	202
Certificate of registration.....	203
Numbers to be displayed upon motor vehicles and motor bicycles..	204
Lamps	205
Registration by manufacturers and dealers—Registration	206
Fictitious number	207
Registration in case of sale.....	207
Nonresident not required to register under certain conditions.....	208
Brakes, horns, etc.....	208
Speed	208
Racing on public highway.....	209
Local ordinances prohibited.....	209
License of chauffeurs—Removals...	210
Chauffeur's badge	212
Use of motor vehicles and motor bicycles without owner's consent and offer or acceptance of bonus on purchase of supplies or parts prohibited	212
Meeting animals—Giving name and address in case of accident.....	212
No effect or right to damage.....	213
Penalties	213
Disposition of registration fees....	215
Public highways and local authorities defined	215
Acts repealed	215
TOWNSHIP INSURANCE COMPANIES.	
Who may form company.....	406
How formed—declaration—requisites of declaration.....	407

TOWNSHIP INSURANCE COMPANIES—Continued.

	Page
Charter—certified copy evidence, etc.	407
Form of declaration to form company	407
Form of charter for.....	407
Number of directors.....	407
Directors—how elected—term of office	407
Subsequent elections, when held...	407
Corporate powers of.....	408
Who may become members.....	409
Manner of insuring.....	409
Persons insured, votes entitled to.	408
President, treasurer and secretary, how elected	409
Secretary and treasurer give bond..	409
Risks, how classified.....	410
Not insure beyond limits of district	410
Adjustment of loss—notify president	410
When president and secretary may adjust loss	410
When committee to ascertain loss.	410
Failure to agree, claimant may appeal	410
County court appoint committee of reference	410
Pay of committee	410
Assessment, when and how made..	411
When president may borrow money	411
Notice of assessment to be given..	411
Suit brought, neglect to pay.....	411
Suits may be brought for losses....	412
Secretary to prepare annual statement	412
Member may withdraw from company	412
Power to cancel policy by giving insured notice	412
President and secretary to report to auditor	412
Certificate of auditor—company pay for	412
At organization to pay auditor \$10..	412
How company may be dissolved....	412
Companies formed under Act 1872.	413
May accept adjoining townships, not exceeding 25.....	414
Manner of receiving contiguous town	414
Obligations not thereby impaired..	414
Township received	415
Consolidation—not to exceed 25 political townships	415
How consolidation may be made..	415
How consolidation effected.....	415

TOWNSHIP ORGANIZATION.

HOW TOWNSHIP ORGANIZATION ADOPTED	33
At general election.....	33
Petition	34
Returns	34
Form of petition to county board for township organization.....	34
When township government commences—Majority vote defined..	35
Commissioners appointed	35
Division of county into towns.....	36
Naming of towns.....	36
Report of commissioners.....	36
Form of report of proceedings of commissioners appointed to divide county into towns.....	36

TOWNSHIP ORGANIZATION—Continued.

	Page
Abstract of report sent to auditors —Record	37
Where names are alike.....	37
Auditor's record of names, etc....	37
First town election.....	37
Notice of first town election.....	37
Justices and constables.....	38
Form of notice by county clerk for first town election.....	38
Refusal to organize—Second election	38
Continued refusal	38
Failure to qualify	39
When part of county not organized	39
HOW DISCONTINUED	40
Petition—Election	40
Result of election.....	41
Election of county commissioners..	41
When commissioners assume duties, etc.	41
Disposition of town records, business, property, etc.....	41
OF THE ALTERATION OF BOUNDARIES, AND DIVISION OF TOWNS AND TOWN PROPERTY	42
Powers of the county board.....	42
Election in new town or towns...	43
Form of petition for alteration of boundaries, change of town lines, or enlarging a town.....	43
Form of petition for dividing a town	43
Terms of officers	44
Taxes	44
Disposition of real estate on division of towns	45
Form of agreement by supervisors and assessors, in case of division of town, concerning disposition and apportionment of real estate	45
Disposition of real estate on annexation of towns	46
Form of deed of conveyance by supervisors and assessors conveying real estate where town is divided	46
Disposition of personal property...	47
Form of proceedings of supervisors and assessors in apportioning property in case of division of towns	47
Meeting of supervisors and assessors	48
Burial grounds	48
Apportionment of debts	48
Disputes submitted to county court	48
Form of notice by supervisor to other officers to meet and apportion property in case of division or alteration of town.....	48
Proceedings to unite towns.....	49-52
Form to submit question of division of property by county court in case of disagreement.....	49
Form of petition to county board.	50
CONSOLIDATION OF TOWNSHIPS IN CERTAIN CITIES....	52
Consolidation of territory into one township	52
Election—Canvass of votes	52

TOWNSHIP ORGANIZATION
—Continued.

	Page
If the majority of votes are in favor of consolidation.....	53
Election of township officers.....	53
Consolidation into one organized township	53
Appointment of one justice from each congressional township as one of the Town Auditors.....	53
Where justices to hold their offices..	53
Repeal	53
CORPORATE POWERS OF TOWNS AND THE EXERCISE THEREOF—WHAT MAY BE DONE AT TOWN MEETINGS—BY-LAWS, RULES AND REGULATIONS	54
Corporate name	54
Corporate powers	55
Powers of town meeting.....	58
Form of clerks' certificate of township tax levy.....	59
Form of joint order of commissioners of highways.....	60
Form of by-laws concerning cattle and other animals running at large	64
Form of notice by justice to owner of animals impounded.....	65
Form of docket entry, on hearing complaint against owner of impounded animals	66
Form of poundmaster's notice of sale	66
Exception as to cities and villages	67
Notice of by-laws, etc., taking effect	68
Effect of certain conveyances.....	68
How conveyances made.....	68
LEGAL PROCEEDINGS IN FAVOR OF AND AGAINST A TOWN	69
How conducted—Service	69
Form of deed of conveyance by town	69
In what name suits brought.....	70
Who competent as witnesses and jurors	70
Jurisdiction of justices.....	70
Partition of town lands.....	71
Costs—Judgment against town....	71
TOWN MEETING—JUDGES OF ELECTION	71
Time of holding meeting.....	71
Notice	72
Election precinct	72
Form of notice of annual township meeting and election.....	72
Annual township meeting and election	72
Place of meeting	73
Change of place of meeting.....	73
Ex-officio judges of elections.....	74
SPECIAL TOWN MEETINGS.....	74
When called	74
Form of request by twenty-five electors for change of place of town meetings	74
Form of statement to be filed in the office of town clerk for special town meeting.....	74
Notice	75

TOWNSHIP ORGANIZATION
—Continued.

	Page
Form of notice—Restriction.....	75
Form of notice for holding special town meetings.....	75
Form of resolution postponing subject for special town meeting....	75
Powers of special meeting.....	76
TOWN OFFICERS ELECTED BY BALLOT—MODE OF CONDUCTING ELECTIONS FOR TOWN OFFICERS	77
Election of officers	77
TOWN OFFICERS—BIENNIAL ELECTION	78
Term of office of clerk, assessor and collector	78
Repeal	78
Trustees of schools.....	78
Organizing town meeting—Moderator	79
Powers of moderator.....	79
Oath of moderator.....	79
Form of oath of moderator of town meeting	79
Clerk—Minutes	80
Clerk pro tem	80
Ballot boxes—Polling places.....	80
Canvass of votes	81
General election laws to apply....	82
Recess	82
Result of elections.....	82
Tie vote	83
Persons elected notified.....	83
Form of canvass of votes by precinct inspectors	83
Form of statement of result of canvass by township returning board	83
List of town officers filed with county clerk	84
Form of notice by town clerk of drawing lots in case of a tie vote between candidates	84
THE MODE OF CONDUCTING TOWN MEETINGS FOR THE TRANSACTION OF MISCELLANEOUS BUSINESS	85
Hour of meeting, etc.....	85
Form of notice by township clerk to a person elected to a township office	85
Clerk of meeting—Record.....	86
Form of record of proceedings of annual township meetings.....	87
Clerk pro tem.....	88
Duties of moderator.....	88
Motions—How decided	88
Division of voters.....	88
Miscellaneous business closed—Reconsidering motions	89
Disorderly conduct	89
Qualification of voters	90
Proceeding with election.....	90
QUALIFICATION AND TENURE OF OFFICE	90
Eligible to office.....	90
Qualifying	91
Neglect to qualify.....	91
Form of oath to be taken and subscribed by town officer.....	91
Poundmaster—Notice of acceptance	92
Collector—Bond	92

TOWNSHIP ORGANIZATION
—Continued.

	Page
Form of supervisor's certificate of election	92
Form of notice of acceptance of overseer of highways or pound-master	92
Failure of collector to give bond..	93
Supervisor, etc., refusing to serve.	93
Entering upon office before taking oath	93
Term of office	94
Successor to demand books, etc....	94
Demand in case of vacancy.....	94
Outgoing officer to deliver over....	94
Demand of executor, etc.....	94
Form of oath to be administered to town officer on going out of office	94
VACANCIES IN TOWN OFFICES AND THE MANNER OF FILLING THEM	95
Board of appointment.....	95
Form of warrant of appointment by justices of the peace, supervisor and town clerk, to fill vacancy	95
Vacancy in board of appointment..	96
Form of order of special election for justice of the peace or constable	96
Notice of appointment.....	97
Resignations	97
Form of notice for special election of justice of the peace or constable	97
Form of notice to one appointed to fill vacancy	97
THE SUPERVISOR AND HIS DUTIES	98
Bond	98
Form of resignation of town officer	98
Form of supervisor's bond.....	99
Form of clerk's approval to be indorsed on supervisor's bond.....	99
Supervisor to receive and pay out money—Report—Clerk to record same and post notices of town meetings	100
Form of certificate of acknowledgment of official bond.....	100
Form of supervisor's statement of financial affairs of the town.....	101
Supervisor to prosecute for penalties	102
Supervisor's account	103
His annual settlement.....	103
Certificate of his account.....	103
Supervisor to attend county board.	103
To lay accounts before town auditors	103
Penalty	103
Form of keeping supervisor's book.	103
Form of certificate of justices of the peace and town clerk, to be entered in supervisor's book upon examination of his accounts....	103
Assistant supervisors	104
Supervisors in Cook county.....	104
Election and classification of supervisors	104
When new town created.....	105
THE TOWN CLERK AND HIS DUTIES	105

TOWNSHIP ORGANIZATION
—Continued.

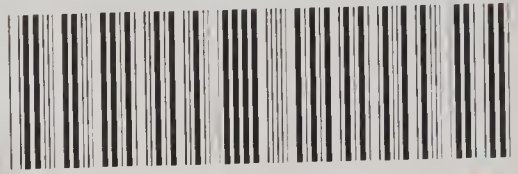
	Page
Records, etc.—Oaths	105
Form of entry of filing paper by town clerk	105
Records of town meetings.....	106
Certificates of votes to raise money	106
Certificates of tax required.....	106
Failure to return	106
Copies—Evidence	106
Form of certificate of town clerk to accompany book of entry of votes for raising money, recorded in town book	106
Form of certificate of town clerk to copies of papers and records..	106
THE BOARD OF TOWN AUDITORS	107
Who constitute	107
Absences supplied	107
Semi-annual meeting	107
Auditing accounts	108
Accounts filed with town clerk, etc.	108
Accounts verified	108
Form of bill against town and affidavit of correctness.....	108
Certificate of audit—Tax.....	109
Town charges	109
Form of certificate of auditors allowing claims against a town, with nature of demand, and to whom the amount is allowed....	109
How taxes raised.....	110
Duty of township clerk—Record...	110
Form of clerk's certificate to county clerk of aggregate amount of accounts audited	110
Form of township clerk's certificate of claim audited.....	110
TOWN AND COUNTY BOARDS OF HEALTH	111
How constituted	111
Powers of board.....	112
Township organization—Penalty, fines—State's attorneys to prosecute	112
Clerk's records and reports.....	112
Compensation	112
Repeal	112
COMPENSATION OF TOWN OFFICERS	113
Fees	113-114
Emergency	114
REFUNDING SURPLUS FUNDS..	115
Surplus of bond funds to be refunded to township.....	115
When such funds paid, how may be appropriated by town.....	115
On vote, such surplus funds may be turned over to commissioners of highways	115
Emergency	116
CITIES ORGANIZED AS TOWNS.	116
Territory of city organized as town	116
Town in city.....	117
Election of officers.....	117
Powers to be exercised by council.	117
What the city council may provide.	117
May regulate the number of justices	117
Vacancies	117

TOWNSHIP ORGANIZATION
—Continued.

	Page
PURCHASE OR LEASE OF TOWN HALLS	118
When town hall to be built—No- tice	118
TOWN HALLS IN TOWNS CO- EXTENSIVE WITH CITIES....	118
• Petition—Form of Proposition— Election—Amount and denomina- tion of bonds	118
Sale of bonds—Levy and collection of annual tax.....	119
Purchase of real estate.....	120
CANADA THISTLES	120
Commissioner of Canada thistles..	120
Duties of commissioner.....	121
Treatment of thistles on enclosed lands—Appeal, etc.	121
Form of appeal from decision of commissioner of Canada thistles	122

TOWNSHIP ORGANIZATION
—Continued.

	Page
Further treatment	123
Prosecutions	123
Report of commissioner.....	123
Form of report of the commission- er of Canada thistles.....	123
Accounts audited	124
Appropriations—Control by county board	124
Form of decision of commissioners of highways in case of appeal..	124
Form of decision of commissioner of Canada thistles.....	124
County board appoint commission- er—Penalty	125
Emergency	125
PUBLICATION OF ANNUAL STATEMENTS	125
Officers to publish annual state- ments	125
Penalty	126



0 012 734 989 7

